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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF SAN DIEGO**
11

12 LEON ALPERT, an individual,) Case No. GIC 881621
on behalf of himself, on behalf of all those)
13 similarly situated, and on behalf of the general) **CLASS ACTION**
public,)
14) **PLAINTIFF'S OPPOSITION**
Plaintiffs,) **TO DEFENDANT**
15 v.) **TIME WARNER'S DEMURRER TO,**
AND ALTERNATIVE MOTION
16 TIME WARNER CABLE, INC., a Delaware) **TO STRIKE, PLAINTIFF'S**
corporation, and DOES 1 TO 100,) **FIRST AMENDED COMPLAINT**
17)
Defendants.)
18) **Date: August 3, 2007**
Time: 10:30 a.m.
19) **Dept: 63**
Judge: Hon. Luis R. Vargas
20)
Trial Date: None Set
21) **Case Filed: March 13, 2007**
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1 **I. INTRODUCTION AND SUMMARY OF ARGUMENT**

2 Time Warner Cable's (TWC's) demurrer is premised on its argument that it did not charge
3 Alpert for basic cable and that the billing statements from TWC, which are Exhibits to the First
4 Amended Complaint (FAC), somehow prove that. Def.'s Memo at p.1:10-16. But a cursory
5 reading of those statements indicates the contrary, such as Alpert's December 2006 statement
6 which specifically itemizes "HOA Standard Service." See FAC, Exhibit C. Standard Service is
7 basic cable service.

8 Similarly, the Subscriber Agreement between TWC and Alpert's HOA makes plain that
9 TWC was charging Alpert, and all other HOA residents, for basic cable. See FAC, Exhibit A.
10 Only the billing statement that precedes TWC's corrected statement fails to disclose payment for
11 basic cable - and that is the point of this lawsuit. FAC, Exhibit B. It is because Alpert did not see
12 on his billing statement that TWC was already collecting basic cable fees from Alpert through his
13 HOA, and that he did not see that the bill was adjusted accordingly to reflect that fact, that he
14 complained to TWC. Only *after* that complaint did his bill go down and the billing statements
15 change.

16 TWC also argues that because Alpert paid his HOA for basic cable which, in turn, paid
17 TWC those monies, Alpert did not pay TWC. But the Subscriber Agreement between Alpert's
18 HOA and TWC states clearly that Residents like Alpert *were* charged, and that TWC collected
19 through the HOA, a basic cable fee of \$ 28.77 per unit. Alpert most certainly *did* pay TWC, as the
20 FAC, the billing statements and the Subscriber Agreement all make plain. TWC's argument that it
21 did not charge Alpert for basic cable is nonsensical.¹ But even if TWC's argument had any merit,
22 the allegations of the FAC, the billing statements attached, and the Subscriber Agreement all
23 clearly raise questions of fact whether TWC was actually charging such a fee. A demurrer cannot
24 resolve such a factual dispute.

25 TWC also argues that the reason Alpert's bill went down was not because of what Alpert

26
27 ¹ TWC accuses plaintiff of trying to "shoot first, ask questions later." Def.'s Memo at
28 p.1:7. The "questions" are fully answered by the FAC and documents appended thereto. Although
Alpert would enjoy inserting a clever reply to such rhetorical nonsense, he will abstain.

1 alleges in his FAC, but simply because he purportedly switched from a la carte pricing to bundled
2 pricing. Def.'s Memo at p.1:17-26. To prove the merits of this argument, TWC relies upon its
3 billing statements - which Alpert specifically claims misled him in the first place. In fact, TWC
4 itself disclaims the accuracy of its billing practices in its online service agreement, as alleged in the
5 FAC. In other words, TWC asks this Court to rule, on a demurrer, that as a matter of law its billing
6 statements were "accurate," when that is contrary to the allegations of the FAC and when TWC
7 itself will not guarantee the accuracy of those statements.

8 Moreover, the billing statements contradict each other, making it impossible to discern
9 exactly which statement TWC now claims was "accurate." One statement does not disclose
10 Alpert's payment for standard basic cable service, whereas the next statement does. In any event,
11 whether the statements, or any one of them, were accurate is obviously disputed and a question of
12 fact which cannot possibly be resolved on a demurrer.

13 At bottom, TWC's demurrer and motion to strike are predicated on TWC's argument that
14 the FAC is "100% factually incorrect." Def.'s Memo at p.1:13. Factual disputes are not resolved
15 on demurrer. TWC's demurrer and motion to strike should be denied.

16 II. LEGAL STANDARD ON DEMURRER

17 A demurrer does not test the truth of the allegations in a pleading, only the sufficiency of
18 the pleadings. *Committee on Children's Television, Inc. v. General Foods Corp.*, 35 Cal.3d 197,
19 213 (1983). The Court "must assume the truth of all properly plead material allegations of the
20 complaint and give it a reasonable interpretation by reading it as a whole and its parts in their
21 context." *Phillips v. Desert Hospital District*, 49 Cal.3d 699 (1989). Consequently, a demurrer
22 must be denied when the factual allegations state a cause of action but the defendant contests their
23 accuracy. *Committee on Children's Television, Inc. v. General Foods Corp, supra*.

24 In a Business & Professions Code section 17200 case, such as this, the facts will be
25 construed in a light most unfavorable to defendants. *Perdue v. Crocker Nat'l Bank*, 38 Cal.3d 913
26 (1985). In such actions, the complaint will construed to uphold the action whenever possible.
27 *Motors, Inc. v. Times-Mirror, Co.*, 102 Cal.App.3d 735, 741 (1980).

III. DISPUTED FACTS CANNOT BE RESOLVED ON DEMURRER

As a threshold matter, TWC's entire demurrer questions whether Alpert's factual allegations are correct. As TWC puts it, the FAC is "100% factually incorrect." Def.'s Memo at p.1:13. Even if that were true, it is well settled that factual disputes are not resolved on demurrer. *Committee on Children's Television, Inc. v. General Foods Corp.*, 35 Cal.3d at 214.

Specifically, TWC argues that "the reduction in price" on Mr. Alpert's bill is the result of his election to purchase extra services as a single package rather than a la carte. Def.'s Memo at p.3:21-23; p.12:11-19; p.13:7. That conclusion by TWC is its own, is disputed by Alpert, and is not found anywhere in the FAC.² To the contrary, in the FAC Alpert specifically alleges that the reduction in charges was because he called and complained that he was already paying for basic cable (FAC, ¶ 12), not because he "elected" to do anything – other than complain that he was being ripped off. He did not change his service in any way; TWC simply corrected the error on his bill. FAC, ¶ 12. TWC's argument that there was some other reason Alpert's bill changed is a disputed fact that cannot possibly be resolved in a demurrer.

Likewise, TWC argues throughout its demurrer that it "never charged" Alpert for basic cable. Def.'s Memo at p.8:11. This core argument is repeated page after page in TWC's papers. That argument is flatly contradicted by not only the allegations of the FAC, but by the billing statements and Subscriber Agreement attached to it as Exhibits. For example, the FAC makes plain that TWC was charging Alpert for basic cable through Alpert's HOA. The FAC at ¶ 7 specifically alleges that "[i]t is estimated that [Alpert's] monthly payment to TIME WARNER for basic cable which is paid through his HOA dues is approximately \$ 28.77."

Likewise, the Subscriber Agreement states that each unit is to be charged the fee of \$ 28.77 payable to TWC. FAC, Ex. A. Similarly, the December 2006 billing statement specifically states that TWC was charging Alpert for basic cable. FAC, Ex. C ["Hoa Standard Service"].

² For example, TWC argues that its December 12, 2006 billing statements (FAC, Ex C) shows "Hoa DIGIPic Trio" and that the "implication" is that this is special HOA pricing of a bundle of services. Def.'s Memo at p.12:9. Alpert's counsel was unable to find any case, and TWC cites none, granting a demurrer based upon an "implication," particularly when the "implication" suggested is contrary to the allegations pleaded.

1 Thus, whether the Court looks to the FAC itself or to the supporting Exhibits, the result is
 2 the same: Alpert has sufficiently pleaded that TWC was charging him for basic cable. If TWC
 3 disagrees with that fact, they may certainly do so – but not on a demurrer where the pleadings are
 4 presumed correct and factual disputes cannot be resolved, and particularly in this case where the
 5 allegations are fully supported by the Exhibits attached thereto.

6 IV. THE CLRA BASED CLAIMS ARE SUFFICIENTLY PLEADED

7 TWC argues that CC Section 1770(a)(3)[which prohibits misrepresentations concerning the
 8 affiliation, connection, or association with, another] and CC Section 1770(a)(13)[which prohibits
 9 making false or misleading statements concerning the reasons for, existence of, or amounts of price
 10 reductions] do not apply here because the FAC does not allege an affirmative representation
 11 concerning its affiliation, connection, or association with Alpert's HOA or the reasons for, or
 12 amounts of price discounts. Def.'s Memo at p.8:1-3. TWC is wrong.

13 At ¶ 15, the FAC specifically states that TWC "systematically misinforms consumers like
 14 ALPERT that the reason his cable bill is being reduced after complaint to TIME WARNER is
 15 because of purported 'bundling' of services, when the real reason is because TIME WARNER is
 16 already collecting fees on behalf of such consumers from the HOA for basic cable services."]; see
 17 also ¶ 29(f) FAC ["the reason a cable bill is being reduced after complaint to TIME WARNER
 18 because of purported 'bundling' of services, when the real reason is because of the HOA pricing to
 19 which ALPERT and the HOA Residents were entitled all along."]

20 Likewise, Alpert's original billing statement (FAC, Ex. B) does not disclose the
 21 relationship between TWC and Alpert's HOA, whereas after he complained, TWC's bill suddenly
 22 *does* disclose the relationship by referencing an HOA – along with a hefty reduction in charges for
 23 exactly the same services provided. FAC, Ex. C.

24 TWC also argues that CC Section 1770(a)(19) does not apply since it is not unconscionable
 25 to require consumers to object to their bill within 30 days. Def's Memo at p.8:15 – 9:11. That is
 26 not Alpert's claim. Alpert's claim is not based solely on the bill's 30 day limitation, but also on the

1 fact that TWC takes no responsibility for the accuracy of its own billing statements. FAC, ¶ 24
2 ["TIME WARNER disclaims any liability for erroneous billing statements while limiting the
3 subscriber to 30 days to discover TIME WARNER's overcharges. This fact alone renders the 30
4 day "waiver" clause unconscionable on its face since TIME WARNER takes no responsibility for
5 the accuracy of prices charged for its own services."] It is the fact that TWC disclaims the
6 accuracy of its billing statements *coupled with* the 30 day limitation that is unconscionable.

7 Curiously, TWC asks this Court to simply "believe" the accuracy of its billing statements
8 when TWC itself disclaims the accuracy of such statement in its online Subscriber Agreement:
9 "2.(j) ... I agree that TWC is not responsible or liable for the quality of any content, merchandise,
10 products or Services (*or the price thereof*) made available to me ..." FAC, Ex. E (Emphasis
11 added). Thus, TWC disclaims any liability for erroneous billing statements while limiting the
12 subscriber to 30 days to discover TWC's overcharges. FAC, ¶ 24. Unsurprisingly, TWC does not
13 address this allegation in its Motion because it necessarily undermines TWC's entire demurrer – a
14 Motion predicated on asking this Court to believe the unbelievable (TWC's billing statements), in
15 TWC's own words.

16 With regard to the procedure TWC requires its customers to follow to challenge a bill,
17 TWC argues in its demurrer that procedure is set forth in font that is the same size as other font on
18 the bill and that the placement of the language is reasonable. Def.'s Memo at p.9:12-23. But what
19 is "reasonable" is obviously a question of fact.

20 In *Schnall v. Hertz Corp.*, 78 Cal.App.4th 1144 (2000), the defendant's standard car rental
21 agreement required renters to choose either to purchase fuel from the defendant at the
22 commencement of the rental or pay a fuel service charge if they failed to return the car with a full
23 tank. The complaint alleged the charge was an unfair business practice and the defendant unfairly
24 and fraudulently concealed/obscured the charge. The Court of Appeal held the trial court erred in
25 dismissing the plaintiff's unfair business practice concealment claim as the per gallon rate was not
26 disclosed in the rental agreement but only in the rental record - a small and hard-to-read document
27 consisting of mainly indecipherable abbreviations, which raised an issue of fact as to whether a
28

1 reasonable customer would know of the charge. *Id.*, at pp.1163-1170. Thus, whether a disclosure
2 is, in fact, "reasonable" is a question of which cannot be resolved on demurrer.

3 TWC also argues that the CLRA requires that an action based upon omission must be
4 contrary to a representation made by the defendant or an omission of a fact that defendant was
5 required to disclose, citing *Daugherty v. American Honda Motor Co., Inc.*, 144 Cal.App.4th 824
6 (2006). Def.'s Memo at p.8:6-8. In *Daugherty*, plaintiffs brought a nationwide class action lawsuit
7 alleging an automobile manufacturer breached its express warranties and violated federal and state
8 consumer protection laws, by failing to disclose an engine defect that did not cause malfunctions in
9 the automobiles until long after the warranty expired. Finding no breach of warranty and no
10 violation of federal or state statutes in the conduct alleged in the complaint, the court affirmed the
11 judgment of dismissal.

12 Significantly, in *Daugherty*, the problem complained of in the vehicles necessarily occurred
13 after the warranty period expired. Thus, the question was whether Honda had a duty to disclose
14 defects which may occur after the expiration of the warranty. The court concluded it did not.
15 "Honda's affirmative representations at the time of sale were its express warranties, as to which no
16 breach occurred." *Id.* at 836.

17 The *Daugherty* court states that nondisclosure is not actionable under the CLRA in the
18 absence of a related representation or disclosure obligation. *Id.* at 835. Here, the related
19 representation is that which is posted on TWC's own website for all to see: specific pricing of its
20 services without any disclosure whatsoever of pricing for HOA Residents where the HOA has an
21 existing contract with TWC. Obviously, any consumer that visits that website, including HOA
22 consumers, would conclude that the pricing listed applies to them since there is no disclaimer or
23 other indication that it would not. The representation of wrong pricing coupled with the
24 nondisclosure of the correct pricing applicable to HOA customers is a violation of the CLRA.

25 The other representation which supports the CLRA claim under the *Daugherty* analysis is
26 the monthly billing statement sent by TWC which the FAC alleges failed to account for, or even
27 disclose, the monthly basic cable fees Alpert and the other class members were already paying.
28

1 These two representations (TWC's website and the billing statements) would likely deceive a
 2 Resident that what they are paying to TWC is correct when it was plainly an overcharge.

3 Moreover, TWC had an obligation to disclose to its HOA customers its HOA pricing. The
 4 Subscriber Agreement obviously exists for the benefit of Residents, such as Alpert; not solely for
 5 the benefit of TWC. There clearly would be no point in having a Subscriber Agreement at all if
 6 Residents had to pay for standard/basic service once to their HOA who then pays TWC, and then
 7 again to TWC – which is exactly what is alleged in the FAC. TWC's concealment of HOA pricing
 8 from Residents is a violation of the CLRA.

9 V. TWC'S CONTRACT BASED ARGUMENTS HAVE NO MERIT

10 TWC argues that obligating a party to a contract to provide notice of a dispute proximate to
 11 the time of payment is embodied in the "voluntary payment doctrine" and is proper. But TWC
 12 admits that for the doctrine to apply such payments be made "with knowledge of the facts." Def.'s
 13 Memo at p.9:9; *Leahy v. Warden*, 163 Cal. 178, 181 (1912). Since the FAC makes clear that
 14 Alpert had no knowledge of the facts, the "voluntary payment doctrine" is obviously irrelevant.
 15 Payment made under false pretenses is not "voluntary."

16 TWC also objects to Alpert's claim that he is a third party beneficiary stating that a B&P
 17 Code section 17200 claim cannot be based on a breach of contract. Def.'s Memo at p.10:19. That
 18 too is wrong. In *Orkin Exterminating Co., Inc. v. FTC*, 849 F.2d 1354 (11th Cir. 1988), the FTC
 19 successfully sued Orkin over systematic breach of a form contract used in hundreds of consumer
 20 transactions.³ Business practices that violate federal laws may be redressed under B&P Code
 21 section 17200 (*Diaz v. Kay-Dix Ranch*, 9 Cal.App.3d 588, 591 (1970)) and such claims may be
 22 brought to correct business practices that violate rules adopted by prior court decisions. *Bondanza*
 23 *v. Peninsula Hospital & Medical Center*, 23 Cal.3d 260 (1979); *Garret v. Coast & Southern Fed.*
 24 *Sav. & Asso'n*, 9 Cal.3d 731 (1973).

25 TWC also argues that Alpert did not sufficiently allege that TWC breached the contract.

26
 27 ³ Decisions by federal courts in construing the FTC Act are "more than ordinarily
 28 persuasive" in guiding the California courts in construing Section 17200. *People ex rel. Mosk v.*
National Research Co. of Calif., 201 Cal.App.2d 765, 772 (1962).

1 Def.'s Memo at p.10:25. That is also wrong. The contract, the defendant's breach, and damages
 2 are all plainly alleged. See, e.g., FAC, ¶¶ 29(g), 43. Indeed, the entire FAC repeatedly states that
 3 TWC overcharges Residents for basic cable. TWC's objection that the FAC does not state these
 4 facts, which is obviously the basis for the systematic breach of contract claim, is absurd.

5 VI. TWC'S CONDUCT WAS DECEPTIVE

6 TWC argues that its business practices were not deceptive citing *Plotkin v. Sajahtera, Inc.*,
 7 106 Cal.App.4th 953 (2003) (Def.'s Memo at p.13:27) for the proposition that reasonable notice
 8 does not have to be the best possible notice. Again, whether the notice given was "reasonable" or
 9 not is a question for a trier of fact, not a question to be resolved on demurrer.

10 In *Plotkin*, an overnight guest initiated a civil class action against a hotel, alleging a
 11 violation of B& P Code section 17200 and other causes of action, arising from defendant's alleged
 12 failure to provide plaintiff with adequate notice of valet parking charges. The *Plotkin* court
 13 concluded that "[c]ommon sense dictates it would be unreasonable for someone availing himself of
 14 valet parking at a hotel in the Los Angeles metropolitan area, much less Beverly Hills, not to
 15 expect to pay for valet parking. The ticket provides reasonable and advance notice of the charge.
 16 Although a rate sign could arguably have been better notice, there is no requirement that reasonable
 17 notice has to be the best possible notice. Moreover, a potential parker could ask if there is a charge
 18 or a self-parking lot and thus is not forced to use valet parking. Accordingly, we agree with the
 19 trial court that reasonable notice of the parking charge was provided and that the public was not
 20 likely to be deceived." *Id.* at 966.

21 Here, no one reading Alpert's original bill (before he complained and it changed) would
 22 have a clue that they were being charged a basic cable fee by TWC or that the Resident was
 23 entitled to HOA pricing, which accounted for that fact, as a result. It is not a matter of insufficient
 24 notice – it is a matter of *no notice*. And unlike *Plotkin* where no one was forced to use the valet
 25 service, here, Residents were all required to pay TWC a fee through their HOA for basic cable.
 26 FAC, Ex. A. It was not an option.

27 Similarly, TWC also cites *Searle v. Wyndham Internat., Inc.*, 102 Cal.App.4th 1327 (2002)
 28

1 for the proposition that not expressly advising a hotel's patrons that a service charge added to a
 2 room bill was paid by the hotel to a server did not violate Section 17200. Searle argued that in
 3 imposing the 17 percent service charge and failing to disclose to guests that the service charge is
 4 then paid to the servers, Wyndham acted unfairly. The *Searle* court concluded that "[b]ecause the
 5 service charge is mandatory and because the hotel is free to do with the charge it as it pleases, the
 6 service charge is simply not a gratuity which is subject to the discretion of the individual patron."
 7 *Id.* at 1335.

8 *Searle* did not involve an allegation of double charging or overcharging for the same
 9 service, where Alpert's FAC does. The 17 percent service charge in *Searle* was charged and paid
 10 only once. Moreover, unlike here, there was no allegation of overcharging in *Searle*, just an
 11 objection to whom those monies were ultimately remitted.

12 Lastly, TWC argues that Alpert has "admitted that he was aware his billing statements
 13 should not include a charge for basic cable" (Def.'s Memo at p.15:7) since Alpert knew his basic
 14 cable fee paid to his HOA was then paid to TWC. Nowhere in the FAC does Alpert claim he knew
 15 his billing statements "should not include a charge for basic cable." To the contrary: Alpert
 16 contacted TWC because he did not see his basic cable fee accounted for in his billing statement –
 17 obviously meaning he thought it *should* appear on the statement. Apparently even TWC disagrees
 18 with its counsel's argument that "a charge for basic cable" should not appear on a billing statement
 19 since, after Alpert complained, TWC itself included it in its subsequent billing statement. FAC,
 20 Exhibit C ["Hoa Standard Service⁴"].

21 VII. CONCLUSION

22 Even if TWC's argument that the FAC is "100% incorrect" was true, its demurrer and
 23 motion to strike could not be granted. Factual disputes are not resolved on demurrer. The
 24 allegations of the FAC are sufficient to state a cause of action against TWC and the Exhibits fully

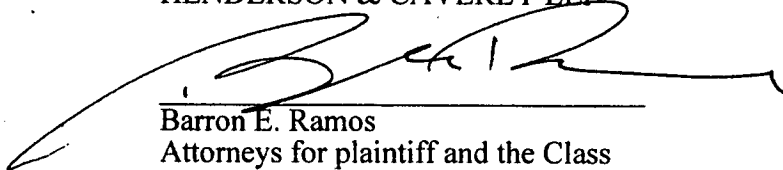
25
 26 ⁴ TWC argues that "[t]he billing statements show that Plaintiff was not and is not being
 27 charged for basic cable." Def.'s Memo at p.14:12. Since plaintiff clearly *was* being charged for
 28 basic cable in accordance with TWC's Subscriber Agreement, as Alpert's subsequent billing
 statements likewise reveal, TWC is admitting to the Court that its previous billing statements were,
 in fact, *deceptive*, since they "show that Plaintiff was not...being charged for basic cable."

1 support those allegations.

2 TWC's demurrer should be denied.

3
4 Dated: July 23, 2007

HENDERSON & CAVERLY LLP

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6 Barron E. Ramos
Attorneys for plaintiff and the Class

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PROOF OF SERVICE

I am employed in the County of San Diego, California. I am over the age of 18 years and not a party to the within action. My business address is Henderson & Caverly LLP, P.O. Box 9144, 16236 San Dieguito Road, Suite 4-13, Rancho Santa Fe, California 92067.

On July 23, 2007, I served the following document:

**PLAINTIFF'S OPPOSITION TO DEFENDANT TIME WARNER'S DEMURRER TO,
AND ALTERNATIVE MOTION TO STRIKE, PLAINTIFF'S FIRST AMENDED
COMPLAINT**

on the parties in this action by placing a true copy thereof in a sealed envelope, addressed as follows:

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☒ (BY MAIL) I placed each such sealed envelope, with postage thereon fully prepaid for first-class mail, for collection and mailing at Henderson & Caverly LLP, Rancho Santa Fe, California, following ordinary business practices. I am familiar with the practice of Henderson & Caverly LLP for collection and processing of correspondence, said practice being that in the ordinary course of business, correspondence is deposited in the United States Postal service the same day as it is placed for collection.

☒ (BY FACSIMILE) I transmitted the above-listed document to the party listed above via facsimile. The transmission was reported complete and without error. The telephone number of the facsimile machine I used was (858) 756-4732.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at Rancho Santa Fe, California on July 23, 2007.



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Attachments: Plaintiff's Opposition to Defendant Time Warner's Demurrer to, and Alternative Motion To Strike, Plaintiff's First Amended Complaint.

Comments:

Please see attached for your review. Thank you.

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9 GENERAL PARTNERSHIP, THROUGH ITS SAN
10 DIEGO DIVISION, DBA TIME WARNER CABLE

9
10 SUPERIOR COURT OF CALIFORNIA

11 COUNTY OF SAN DIEGO

12 LEON ALPERT, an individual, on behalf
13 of himself, on behalf of all those similarly
14 situated, and on behalf of the general
15 public,

16 Plaintiffs,

17 v.

18 TIME WARNER CABLE, INC., a
19 Delaware corporation, and DOES 1 TO
20 100,

21 Defendants.

CASE NO. GIC881621

**DEFENDANT TIME WARNER
ENTERTAINMENT-ADVANCE
NEWHOUSE PARTNERSHIP, THROUGH
ITS SAN DIEGO DIVISION, DBA TIME
WARNER CABLE'S REPLY IN SUPPORT
OF ITS DEMURRER TO AND
ALTERNATIVE MOTION TO STRIKE
PORTIONS OF PLAINTIFF LEON
ALPERT'S FIRST AMENDED
COMPLAINT**

Date: August 3, 2007
Time: 10:30 a.m.
Dept: 63
Judge: Luis R. Vargas

Complaint: March 13, 2007
FAC: May 16, 2007

COPY
FILED
Clerk of the Superior Court

JUL 27 2007

By: C. COROTTO, Deputy

1 Defendant Time Warner Entertainment-Advance Newhouse Partnership, a New York
2 general partnership, through its San Diego Division, dba Time Warner Cable ("TWC"), sued
3 erroneously as Time Warner Cable, Inc., respectfully submits this Reply Memorandum of Points
4 and Authorities in Support of Its Demurrer to or, in the Alternative, Motion to Strike Portions of
5 Plaintiff Leon Alpert's ("Plaintiff") First Amended Complaint ("FAC").

6 **I. INTRODUCTION.**

7 The facts are clear - the only issue to litigate in this demurrer is whether the parties must
8 engage in wasteful class action litigation before the case must be dismissed or whether the issue
9 can be resolved at the pleading stage. Thankfully, the record is sufficient to resolve the issue on a
10 demurrer as the documents that clearly show the facts are attached to Plaintiff's FAC - Plaintiff's
11 billing statements. As TWC argued in its moving papers, Plaintiff is 100% factually incorrect.
12 There are no disputed facts because Plaintiff's allegations are 100% contradicted by the exhibits
13 attached to the FAC.

14 The billing statements and other exhibits that are part of the Plaintiff's FAC flatly
15 contradict Plaintiff's unsupported allegation that TWC charged him for basic cable service that
16 was provided to him through his homeowner's association ("HOA"), and conclusively
17 demonstrate the true facts - that his bill changed because he switched to a billing plan that
18 included a bundled discount. Plaintiff's Opposition does nothing to cure these, and other,
19 deficiencies noted by TWC moving papers.

20 Furthermore, there is no factual basis for the filing of the FAC. The FAC is entirely built
21 on assumption, speculation and conjecture. It is, of course, Plaintiff's obligation to state facts
22 demonstrating the essential facts of his FAC. Rather than do so, he relies solely on his argument
23 that his monthly bill was lowered after he had a conversation with his cable provider as somehow
24 proof that TWC charged him for basic cable service that was provided to him through his HOA.
25 A FAC like this, one that is replete with conclusory statements of both fact and law, as well as
26 improper contentions and deductions, is fatally deficient.

27 Therefore, TWC respectfully requests that the Court sustain without leave to amend its
28 demurrer to Plaintiff's FAC. Alternatively, if the Court determines that Plaintiff has stated a

1 claim as to any of the "prongs" of Section 17200, Defendant moves to strike the allegations as to
 2 the "prongs" for which Plaintiff fails to state a claim.

3 **II. THE COMPLAINT AS A WHOLE FAILS TO MEET MINIMUM PLEADING**
 4 **REQUIREMENTS.**

5 As stated in the moving papers, the FAC fails to state sufficient facts to support any cause
 6 of action against TWC for violation of California Business & Professions Code section 17200, *et*
 7 *seq.* ("Section 17200"). Plaintiff fails to allege the necessary facts and elements of his claims.
 8 Instead, the FAC is replete with conclusory statements of both fact and law, as well as improper
 9 contentions and deductions. The FAC is entirely built on conjecture and speculation.

10 More importantly, the fundamental flaw in the FAC is that the allegations in the FAC are
 11 directly contradicted by the facts in the exhibits attached to the FAC. The law is clear that courts
 12 "rely on and accept as true the contents of the exhibits and treat as surplusage the pleader's
 13 allegations as to the legal effect of the exhibits." *Barnett v. Fireman's Fund Ins. Co.*, 90 Cal.
 14 App. 4th 500, 505 (2001) (citing *Weitzenkorn v. Lesser*, 40 Cal. 2d 778, 785 (1953); *Dodd v.*
 15 *Citizens Bank of Costa Mesa*, 222 Cal. App. 3d 1624, 1627 (1990)). For example, in a breach of
 16 contract case where a Plaintiff alleges in the complaint that Defendant agreed to do "X, Y, and Z"
 17 and attached to the complaint is the contract which clearly does not say that Defendant agreed to
 18 do "X, Y, and Z," the court must ignore the inconsistent allegations and must look at the
 19 document attached to the complaint.

20 In Plaintiff's FAC, Plaintiff alleges that TWC charged him for basic cable service, and
 21 that he should not have been charged, as basic cable service was being provided to him through
 22 his HOA. Plaintiff attaches to his FAC his billing statements which clearly show that TWC did
 23 not charge him for basic cable service that was being provided to him through his HOA. The
 24 court must ignore Plaintiff's inconsistent allegations and must look at the documents attached to
 25 the complaint.

26 Furthermore, contrary to Plaintiff's statement that a demurrer may not be based upon an
 27 implication, a court treats as true not only the complaint's material factual allegations, but also
 28 facts that may be implied or inferred from those expressly alleged. *Poseidon Development, Inc. v.*

1 *Woodland Lane Estates, LLC*, 62 Cal. Rptr. 3d 59 (2007) (citing *Amarel v. Connell*, 202 Cal.
 2 App. 3d 137, 141 (1988)). Similarly a court treats as true not only those facts as attached in an
 3 exhibit, but also those facts which may be implied or inferred from those facts. The exhibits
 4 clearly show that the price decrease that Plaintiff experienced is nothing more than the bundled
 5 price discount and does not reflect that Plaintiff was previously charged for basic cable service
 6 that was being provided to him through his HOA.

7 **III. THE FAC FAILS TO STATE FACTS SUFFICIENT TO CONSTITUTE A CAUSE**
 8 **OF ACTION FOR VIOLATIONS OF SECTION 17200.**

9 A plaintiff alleging a cause of action under the Business and Professions Code section
 10 17200 *et seq.* "must state with reasonable particularity the facts supporting the statutory elements
 11 of the violation." *Khoury v. Maly's of California, Inc.*, 14 Cal. App. 4th 612, 619 (1993)
 12 (demurrer to a Business and Professions Code section 17200 claims sustained because a plaintiff
 13 failed to "describe with any particularity the facts supporting the violation"). As already
 14 explained in detail in TWC's moving papers, Plaintiff failed to plead his section 17200 claim.

15 In opposition to TWC's moving papers, Plaintiff merely repeats allegations from his FAC,
 16 which TWC has already argued are not sufficient to constitute a cause of action for violations of
 17 section 17200. Repeating conclusory statements of both fact and law, as well as improper
 18 contentions and deductions, does not fix the fundamental flaw in Plaintiff's FAC that there is no
 19 factual basis for this lawsuit. Plaintiff's allegations fail to state any unlawful, unfair or fraudulent
 20 act that would support his section 17200 cause of action against TWC. Accordingly, a demurrer
 21 is appropriate.

22 **A. The FAC Fails to State Facts Sufficient to Constitute a Cause of Action**
 23 **for "Unfair" Business Practices.**

24 Plaintiff claims that a "cursory reading" of the billing statement shows that TWC charged
 25 Plaintiff for basic cable. (Opposition 2:4-6.) However, a careful review of the billing statements
 26 proves just the opposite – that TWC has never charged Plaintiff for basic cable service that is
 27 covered by the HOA agreement. Moreover, a careful review of the billing statements shows that

28 /////

1 the billing statements are not, as Plaintiff alleges, impossible to discern and do not, as Plaintiff
2 alleges, contradict each other.

3 Plaintiff argues in his Opposition that the February 12, 2006 billing statement “fails to
4 disclose payment for basic cable – that is the point of this lawsuit.” There is no itemized monthly
5 charge listed for basic cable on Plaintiff’s February 12, 2006 billing statement for the simple fact
6 that TWC did not charge Plaintiff for basic cable service that is covered by the HOA agreement.
7 A careful review of the billing statement shows that each itemized monthly charge for the extra
8 services he purchased adds up to the total payment due. **On this critical issue on which Plaintiff**
9 **carries the burden of proof (whether he was charged for basic cable services that are**
10 **covered by the HOA), Plaintiff offers nothing but assumption, speculation, and conjecture.**

11 Plaintiff also argues in his Opposition that the December 12, 2006 billing statement is
12 somehow proof that TWC charged Plaintiff for basic cables that are covered by the HOA
13 agreement. (Opposition 2:4-6.) But this argument is nonsensical. Plaintiff is not alleging TWC
14 charged him for basic cable on his December 12, 2006 billing statement. (FAC ¶ 16.) Rather,
15 Plaintiff alleges that the December 12, 2006 billing statement is correct and properly reflects his
16 HOA pricing. (*Id.*) **Again, Plaintiff’s fails to satisfy his pleading burden on the essential**
17 **issue of whether TWC charged him for basic cable services that are covered by the HOA.**
18 His conclusory allegations are inconsistent with the exhibits attached to the FAC and must be
19 disregarded.

20 **B. The FAC Fails to State Facts Sufficient to Constitute a Cause of Action**
21 **for “Deceptive” Business Practices.**

22 As already explained in detail in TWC’s moving papers and above, the billing statements
23 clearly show that TWC did not charge Plaintiff for basic cable services that are covered by his
24 HOA. Plaintiff’s allegations that TWC “deceptively overcharged” him are directly contradicted
25 by the billing statements and must be disregarded.

26 Additionally, Plaintiff does not refute TWC’s assertion in its moving papers that the
27 “deceptive” prong of Section 17200 does not impose an affirmative obligation for businesses to
28 provide the “best possible notice” to prevent misleading of the public. *Plotkin v. Sajahtera, Inc.*,

1 106 Cal. App. 4th 953, 966 (2003). Plaintiff rather attempts, but fails, to distinguish the case
 2 cited by TWC its moving papers from his lawsuit by arguing that TWC provided no notice that
 3 Plaintiff was entitled to HOA pricing. This argument is nonsensical. First, Plaintiff knows (or
 4 should know) that he was entitled to HOA pricing as Plaintiff knows (or should know) the terms
 5 of his contract with his HOA. Plaintiff even alleges in the FAC that he “pays a fee that covers
 6 basic cable services pursuant to an agreement between [TWC] and [Plaintiff]’s HOA.” Plaintiff’s
 7 knowledge that he was entitled to HOA pricing completely undermines his argument that TWC
 8 provided no notice to Plaintiff of HOA pricing.

9 Second, Plaintiff argues that “no one reading Alpert’s original bill (before he complained
 10 and it changed) would have a clue that they were being charged a basic cable fee by TWC.”
 11 (Opposition 9:21-23.) This argument is also nonsensical in light of the facts shown in the billing
 12 statements – TWC never charged Plaintiff a basic cable fee on his original (February 12, 2006)
 13 bill statement. And third, as the *Plotkin* case noted, “a potential parker could ask if there is a
 14 charge or a self-parking lot.” 106 Cal. App. 4th at 966. Likewise, Plaintiff could have simply
 15 asked if there was special pricing for HOA subscribers, especially in light of the fact that Plaintiff
 16 alleges Plaintiff’s HOA agreement with TWC “require[e] the HOA to affirmatively market
 17 [TWC]’s services and products to its members.” (FAC ¶ 8.) Accordingly, Plaintiff’s cause of
 18 action for deceptive business practices fails.

19 C. **The FAC Fails to State Facts Sufficient to Constitute a Cause of Action**
 20 **for “Unlawful” Business Practices.**

21 1. **The FAC Fails to State Facts Sufficient to Support a Cause of Action**
 22 **Based on a Violation of Civil Code Sections 1770(a)(3), (13) and (19).**

23 As shown in TWC’s moving papers, Plaintiff cannot state a cause of action under any
 24 causes of action borrowing violations of the Consumer Legal Remedies Act (“CLRA”).
 25 Specifically, Plaintiff still fails to state facts sufficient to support a cause of action based on a
 26 violation of the California Civil Code sections 1770(a)(3), (13), and (19). First, Plaintiff did not
 27 allege an essential element of a CLRA claim – that the alleged misrepresentation or omission was
 28 intended by TWC to result in Plaintiff purchasing cable services. Cal. Civ. Code § 1770(a)
 (Section 1770(a) proscribes specified acts or practices “in a transaction intended to result or

1 which results in the sale or lease of goods or services to any consumer....”) For this reason alone,
 2 each of Plaintiff’s causes of action borrowing violations of the CLRA fails.

3 Second, Plaintiff’s attempts to characterize the facts as including misrepresentations or
 4 disclosure obligations by TWC fail. Plaintiff’s allegations suggest, without any basis or support,
 5 that TWC has some undefined duty to disclose on its website the contract specific terms of each
 6 of its bulk agreements with HOA’s. Plaintiff knows (or should know) the terms of the contracts
 7 with his own HOA, and there is no basis to suggest that TWC had any obligations to publish
 8 those terms to the cable community at large.

9 As to Plaintiff’s claim under section 1770(a)(19), which proscribes “[i]nserting an
 10 unconscionable provision in the contract,” Plaintiff claims that TWC disclaims any liability for
 11 erroneous billing statements and therefore the court cannot rely on the accuracy of the billing
 12 statements. TWC does not disclaim liability for erroneous billing statements. Plaintiff selectively
 13 quotes a portion of Section 2(j) of the Time Warner Cable Residential Services Subscriber
 14 Agreement (FAC Ex. E). The context of section 2(j) is that TWC is giving notice to consumers
 15 that some of the cable and cable related services offered to consumers may be provided by third
 16 parties and for which there may be charges payable to third parties. Within this context, TWC
 17 disclaims responsibility and liability for “the quality of any content, merchandise, products or
 18 Services (or the price thereof) made available to me via the Services, for the representations or
 19 warranties made by the seller or manufacturer or any such item, or for damage to or injury, if any,
 20 resulting from the use of such item.” The disclaimer is not for the accuracy of billing statements
 21 as a whole, but rather for individual prices of content, merchandise, products or Services. This
 22 type of disclaimer is necessary when TWC is providing cable and cable related services which
 23 may be payable to third parties affiliated with TWC. Moreover, it is a common and reasonable
 24 business practice especially appropriate where the charges may vary from month to month and
 25 Plaintiff is in the best position to know whether the charges accurately reflect the services he
 26 ordered during a specific period.

27 /////

28 Additionally, contrary to Plaintiff’s assertion that “whether a disclosure is, in fact,

1 'reasonable' is a question of which cannot be resolved on demurrer" (Opposition 7:1-2), courts
 2 can and do, sustain demurrers on questions of "reasonableness." For example, in *Shvarts v.*
 3 *Budget Group*, 81 Cal. App. 4th 1153 (2000), the Court of Appeal addressed a case involving a
 4 similar refueling charge to the one at issue in the case cited by Plaintiff, *Schnall v. Hertz Corp.*,
 5 78 Cal. App. 4th 1144 (2000). Like *Schnall*, *Shvarts* involved a class action by car renters against
 6 a car rental corporation, alleging unfair business practices based on refueling charges for rental
 7 cars returned without full gas tanks. But unlike *Schnall*, the court in *Shvarts* held that the trial
 8 court properly sustained defendant's demurrer without leave to amend. The court distinguished
 9 *Schnall* from *Shvarts* by stating that in *Shvarts*, the charge was "clearly printed on the first page
 10 of the rental agreement" unlike the per gallon rate in *Schnall* which was "not disclosed in the
 11 rental agreement but only in the rental record, a small and hard-to-read document consisting for
 12 the most part of indecipherable abbreviations." *Id.* at 1164.

13 Here, like *Shvarts*, the contract provision at issue is clearly printed on the first page of the
 14 billing statement. It is set forth in font that is the same size as the rest of the text in the same area
 15 on the billing statement. The placement of the language is in a logical part of the billing
 16 statement directly below an all caps and underlined title "ABOUT YOUR TIME WARNER
 17 CABLE AGREEMENT." And the language from the billing statement is clear and unambiguous.
 18 Therefore this court can and should determine that the provision was reasonable.

19 Furthermore, the contract provision is not only reasonable, but it is also lawful. The
 20 voluntary payment doctrine includes a concept that one cannot complain about making a payment
 21 when one is negligent in performing research about the payment. *See, e.g., Sierra Inv. Corp. v.*
 22 *Sacramento County*, 252 Cal. App. 2d 339, 342 n.3 (1967); *McMillan v. O'Brien*, 219 Cal. 775,
 23 782 (1934). Here, the billing statements clearly state what services are being offered and what
 24 the amount of those services are. Plaintiff had an opportunity to review his bill and inquire as to
 25 the amounts charged. Plaintiff cannot pay the bill without any inquiry, and then later complain
 26 about it.

27 /////

2. **The FAC Fails to State Facts Sufficient to Support a Cause of Action Based on Breach of Contract.**

Plaintiff's FAC is premised on the erroneous theory that in allegedly breaching its contract with Plaintiff's HOA, TWC had committed unlawful acts in violation of Section 17200. This theory has been tested, and barred, by various section 17200 cases rejecting attempts to affix a section 17200 label on private contractual disputes. *See, e.g., Cortez v. Purolator Air Filtration Products*, 23 Cal. 4th 163, 173 (2000) (UCL "is not an all-purpose substitute for a tort or contract action"); *Kraus v. Trinity Mgmt. Services, Inc.*, 23 Cal. 4th 116, 134 (2000) (citing prior cases that "distinguished a UCL claim from claims based on breach of contract or fraud").

Plaintiff cites to an Eleventh Circuit case analyzing section 5 of the FTC Act which is neither controlling nor determinative. California courts are the "ultimate arbiters of the meaning and scope of [section 17200], just as the federal courts are the ultimate arbiters of the meaning and scope of section 5 and the FTC's authority under it." *Cel-Tech Communications v. Los Angeles Cellular Tel. Co.*, 20 Cal. 4th 163, 186 (1999).

As the court made clear in *Silicon Knights, Inc. v. Crystal Dynamics, Inc.*, 983 F. Supp. 1303, 1316 (N.D. Cal. 1997), a section 17200 claim must "state with reasonable particularity the facts supporting the statutory elements of the violation," quoting *Khoury v. Maly's of California, Inc.*, 14 Cal. App. 4th 612, 619 (1993), in which the court affirmed dismissal of a UCL claim predicated, among other things, on a theory that, as Plaintiff claims here, a breach of contract constituted a section 17200 claim. Thus, Plaintiff's conclusory assertion that the facts in the FAC alleging a breach of contract somehow fulfill the pleading obligations of the "unlawful" prong is erroneous.


IV. CONCLUSION.

Plaintiff has failed to allege facts to support the fundamental premise of all of his claims – that he was charged for basic cable service that was already provided by his HOA. In fact, the opposite is shown by the billing statements he attached to his FAC. For the reasons stated, TWC respectfully requests that the Court sustain its demurrer to Plaintiff's FAC without leave to amend. Alternatively, to the extent that the Court is persuaded that no claim has been stated as to

1 certain "prongs" of Section 17200, the Court should grant the motion to strike the relevant
2 portions of the FAC.

3 Dated: July 27, 2007

4 DLA PIPER US LLP

5
6 By 

7 JEFFREY M. SHOHET

8 JULIE L. HUSSEY

9 CARRIE S. DOLTON

10 Attorneys for Defendant

11 TIME WARNER ENTERTAINMENT-

12 ADVANCE NEWHOUSE PARTNERSHIP,

13 A NEW YORK GENERAL PARTNERSHIP,

14 THROUGH ITS SAN DIEGO DIVISION,

15 DBA TIME WARNER CABLE

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7 TIME WARNER CABLE, INC.

8 SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF SAN DIEGO

11 LEON ALPERT, an individual, on behalf
12 of himself, on behalf of all those similarly
13 situated, and on behalf of the general
14 public,

13 Plaintiffs,

14 v.

15 TIME WARNER CABLE, INC., a
16 Delaware corporation, and DOES 1 TO
17 100,

18 Defendants.

CASE NO. GIC881621

PROOF OF SERVICE

Date June 1, 2007
Time 1:30 p.m.
Dept: 74
Judge: Linda B. Quinn

Complaint: March 13, 2007

COPY
FILED
Clerk of the Superior Court

JUL 27 2007

By: C. COROTTO, Deputy

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is DLA Piper US LLP, 401 B Street, Suite 1700, San Diego, California 92101. On July 27, 2007, I served the within document(s):

DEFENDANT TIME WARNER ENTERTAINMENT-ADVANCE NEWHOUSE PARTNERSHIP, THROUGH ITS SAN DIEGO DIVISION, DBA TIME WARNER CABLE'S REPLY IN SUPPORT OF ITS DEMURRER TO AND ALTERNATIVE MOTION TO STRIKE PORTIONS OF PLAINTIFF LEON ALPERT'S FIRST AMENDED COMPLAINT

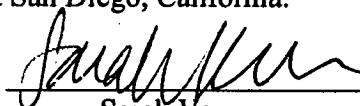
- ☒ by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.
- ☒ by placing a sealed envelope or package designated by UPS, with delivery fees paid or provided for, a true copy of each documents(s) above, in DLA Piper US LLP's mail room for collection, processing and delivery this same day to a deposit box or other facility regularly maintained by the express service carrier, or delivered to an authorized courier or driver authorized by the express service carrier to receive documents. I further declare that I am readily familiar with the business' practice for collection and processing of correspondence for delivery with express service carriers (i.e., FedEx, DHL, etc.); and that the correspondence shall be deposited with an express service carrier this same day in the ordinary course of business, to each addressee as set forth below.
- ☐ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Diego, California addressed as set forth below.
- ☐ by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.

Barron E. Ramos, Esq.
 Kristen E. Caverly
 Henderson & Caverly LLP
 P.O. Box 9144
 16236 San Dieguito Road, Suite 4-13
 Rancho Santa Fe, CA 92067
 Phone: (858) 756-6342
 Fax: (858) 756-4732

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing affidavit.

1 I declare under penalty of perjury under the laws of the State of California that the above
2 is true and correct.

3 Executed on July 27, 2007, at San Diego, California.

4 
5 Sarah Van



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Fax Transmission Cover Sheet

July 27, 2007

To

Telephone

Fax Number

Barron E. Ramos
Henderson & Caverly LLP

858-756-4732

From: Carrie S. Dolton
619.699.2859

Client-Matter Number: 325566-11

Re: Leon Alpert, et al. v. Time Warner Cable, Inc., et al.

Pages: - 14 - (including this form)

Originals:

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If there is a problem with this transmission, please call Sarah Van at 619-699-2770

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T 619.699.2859
F 619.784.6659**Fax Transmission Cover Sheet****July 27, 2007**To
Barron E. Ramos
Henderson & Caverly LLP

Telephone

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858-756-4732From: **Carrie S. Dolton**
619.699.2859Client-Matter Number: **325566-11**Re: **Leon Alpert, et al. v. Time Warner Cable, Inc., et al.**Pages: **14** - (Including this form)

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**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
HALL OF JUSTICE**

TENTATIVE RULINGS - August 02, 2007

EVENT DATE: 08/03/2007 EVENT TIME: 10:30:00 AM DEPT.: C-63
JUDICIAL OFFICER: Luis R. Vargas

CASE NO.: GIC881621
CASE TITLE: ALPERT VS TIME WARNER CABLE INC

CASE CATEGORY: Civil - Unlimited CASE TYPE: Business Tort

EVENT TYPE: Demurrer / Motion to Strike
CAUSAL DOCUMENT/DATE FILED: Demurrer, 06/20/2007

Defendant Time Warner Cable's Demurrer to and Alternative Motion to Strike Portions of Plaintiff Leon Alpert's First Amended Complaint ("FAC") is overruled.

Section 17200 prohibits unlawful, unfair or fraudulent business acts or practices. Only one of these three elements must be met. In this case, Plaintiff has alleged sufficient facts to state a claim for violation of B&PC §17200, et seq. In addition, Defendant relies on the billing records as support their contention the FAC has no merit, however, it is unclear on the face of the billings records why the amounts billed changed between Exhibits B, C and D.

The Alternative Motion to Strike is denied. Preliminarily, the motion to strike should be filed as a separate motion. Secondly, the court does not find the allegations are false, irrelevant or improper.

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL

MINUTE ORDER

Date: 08/07/2007

Time: 10:30:00 AM

Dept: C-63

Judicial Officer Presiding: Judge Luis R. Vargas

Clerk: Patricia Ashworth

Bailiff/Court Attendant: Derek Sanders

ERM:

Reporter: Lois Elaine Mason

Case Init. Date: 03/13/2007

Case Title: ALPERT vs TIME WARNER CABLE INC

Case No: GIC881621

Case Category: Civil - Unlimited

Case Type: Business Tort

Event Type: Demurrer / Motion to Strike

Moving Party: Time Warner Entertainment-Advance Newhouse Partnership

Causal Document & Date Filed: Demurrer, 06/20/2007

Appearances:

The Court, having taken the above-entitled matter under submission on 08/03/2007 and having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now rules as follows:

Defendant Time Warner Cable's Demurrer to and Alternative Motion to Strike Portions of Plaintiff Leon Alpert's First Amended Complaint ("FAC") is overruled.

Section 17200 prohibits unlawful, unfair or fraudulent business acts or practices. Only one of these three elements must be met. In this case, Plaintiff has alleged sufficient facts to state a claim for violation of B&PC §17200, et seq. In addition, Defendant relies on the billing records as support their contention the FAC has no merit, however, it is unclear on the face of the billings records why the amounts billed changed between Exhibits B, C and D.

The Alternative Motion to Strike is denied. Preliminarily, the motion to strike should be filed as a separate motion. Secondly, the court does not find the allegations are false, irrelevant or improper.



Judicial Officer Presiding: Judge Luis R. Vargas

Date: 08/07/2007

MINUTE ORDER

Dept: C-63

Page: 1

Calendar No.: 16

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

STREET ADDRESS: 330 West Broadway
 MAILING ADDRESS: 330 West Broadway
 CITY AND ZIP CODE: San Diego, CA 92101
 BRANCH NAME: Central
 TELEPHONE NUMBER: (619) 685-6064

PLAINTIFF(S) / PETITIONER(S): LEON ALPERT

DEFENDANT(S) / RESPONDENT(S): Time Warner Entertainment-Advance Newhouse Partnership

ALPERT VS TIME WARNER CABLE INC

NOTICE OF HEARING

CASE NUMBER:

GIC881621

Notice is given that the above-entitled case has been set for the reason listed below and at the location shown above. All inquiries regarding this notice should be referred to the court listed above.

TYPE OF HEARING

Civil Case Management Conference

DATE

09/21/2007

TIME

10:00 am

DEPT

C-63

JUDGE

Luis R. Vargas

Counsel: Check service list. If you have brought a party into this case who is not included in the service list, San Diego Superior Court Local Rules, Division II, requires you to serve the party with a copy of this notice.

A case management statement must be completed by counsel for all parties or parties in pro per and timely filed with the court at least 15 days prior to the initial case management conference. (San Diego Local Rules, Division II, CRC Rule 212).

All counsel of record or parties in pro per shall appear at the Case Management Conference, be familiar with the case, and be fully prepared to participate effectively in the hearing, including discussions of ADR options.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

Central
330 West Broadway
San Diego, CA 92101

SHORT TITLE: ALPERT vs TIME WARNER CABLE INC**CLERK'S CERTIFICATE OF SERVICE BY MAIL****CASE NUMBER:****GIC881621**

I certify that I am not a party to this cause. I certify that a true copy of the NOTICE OF HEARING was mailed following standard court practices in a sealed envelope with postage fully prepaid, addressed as indicated below. The mailing and this certification occurred at San Diego, California, on 08/15/2007.

Clerk of the Court, by:

D. Hernandez
D. Hernandez

, Deputy

BARRON E RAMOS
PO BOX 9144, 16236 SAN DIEGUITO RD STE 4-13
RANCHO SANTA FE, CA 92067-9144

Julie L. Hussey
401 B Street suite 1700
DLA PIPER US LLP
San Diego, CA 92101

08/24/2007 15:43 858-4732

HENDERSON CAVE

PAGE 02/03

AUG. 24. 2007 3:39PM DLA PIPER US LLP 6196992701

NO. 875 P.2

1 JEFFREY M. SHOHET (Bar No. 067529)
 2 JULIE L. HUSSEY (Bar No. 237711)
 3 CARRIE S. DOLTON (Bar No. 234298)
 4 DLA PIPER US LLP
 5 401 B Street, Suite 1700
 6 San Diego, CA 92101-4297
 7 Tel: 619.699.2700
 8 Fax: 619.699.2701

F I L E D

Clerk of the Superior Court

AUG 31 2007

By: P. ASHWORTH, Deputy

6 Attorneys for Defendant
 7 TIME WARNER CABLE, INC.

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO

11 LEON ALPERT, an individual, on behalf
 12 of himself, on behalf of all those similarly
 13 situated, and on behalf of the general
 14 public,

Plaintiffs,

v.

15 TIME WARNER CABLE, INC., a
 16 Delaware corporation, and DOES 1 TO
 17 100,

Defendants.

CASE NO. GIC881621

STIPULATION AND [PROPOSED]
 ORDER EXTENDING DEADLINE TO
 ANSWER COMPLAINT

Dept: 63
 Judge: Luis R. Vargas

First Amended Complaint: May 16, 2007

DLA PIPER US LLP
 SAN DIEGO

SDA1758308.1
 325566-11

STIPULATION AND [PROPOSED] ORDER EXTENDING DEADLINE TO ANSWER COMPLAINT

08/24/2007 15:43 858-4732

HENDERSON CAVERLY

PAGE 03/03

AUG. 24, 2007 3:39PM DLA PIPER US LLP 6196992701

NO.875 P.3

1 WHEREAS, the parties, through their respective counsel, appeared on August 3, 2007, for
2 a hearing on Defendant's Demurrer to and Alternative Motion to Strike Portions of Plaintiff's
3 First Amended Complaint;

4 WHEREAS, the Court issued its Order on August 7, 2007, overruling Defendant's
5 Demurrer and Alternative Motion to Strike Portions of Plaintiff's First Amended Complaint;

6 WHEREAS, Defendant did not receive written notice of the order in due course and only
7 learned of the order on August 21, 2007, when Defendants sent an attorney service to the Court to
8 obtain the order;

9 WHEREAS, Defendant seeks permission to file its Answer on September 5, 2007;

10 WHEREAS, Plaintiffs have agree to stipulate to such a filing schedule;

11 IT IS HEREBY STIPULATED AND AGREED by the parties that Defendant's Answer
12 shall be filed and served on or before September 5, 2007.

13 Dated: August 24, 2007
14

15 DLA PIPER US LLP

16 By 
17

18 JEFFREY M. SHOHE
19 JULIE L. HUSSEY
20 CARRIE S. DOLTON
21 Attorneys for Defendant
22 TIME WARNER ENTERTAINMENT-
23 ADVANCE NEWHOUSE PARTNERSHIP,
24 A NEW YORK GENERAL PARTNERSHIP,
25 THROUGH ITS SAN DIEGO DIVISION,
26 DBA TIME WARNER CABLE

27 Dated: August 24, 2007
28

HENDERSON & CAVERLY

By 
26

27 BARRON E. RAMOS
28 KRISTEN E. CAVERLY
Attorneys for Plaintiff LEON ALPERT

DLA PIPER US LLP
SAN DIEGO

SD11758308.1
325566-11

-1-

STIPULATION AND [PROPOSED] ORDER EXTENDING DEADLINE TO ANSWER COMPLAINT

1 JEFFREY M. SHOHE (Bar No. 067529)
2 JULIE L. HUSSEY (Bar No. 237711)
3 CARRIE S. DOLTON (Bar No. 234298)
4 DLA PIPER US LLP
5 401 B Street, Suite 1700
6 San Diego, CA 92101-4297
7 Tel: 619.699.2700
8 Fax: 619.699.2701

9 Attorneys for Defendant
10 TIME WARNER CABLE, INC.

11 SUPERIOR COURT OF CALIFORNIA
12 COUNTY OF SAN DIEGO

13 LEON ALPERT, an individual, on behalf
14 of himself, on behalf of all those similarly
15 situated, and on behalf of the general
16 public,

17 Plaintiffs,

18 v.

19 TIME WARNER CABLE, INC., a
20 Delaware corporation, and DOES 1 TO
21 100,

22 Defendants.

F I L E D

Clerk of the Superior Court

AUG 31 2007

By: P. ASHWORTH, Deputy

CASE NO. GIC881621

PROOF OF SERVICE

Dept: 63
Judge: Luis R. Vargas

First Amended Complaint: May 16, 2007

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is DLA Piper US LLP, 401 B Street, Suite 1700, San Diego, California 92101. On August 31, 2007, I served the within document(s):

STIPULATION AND [PROPOSED] ORDER EXTENDING DEADLINE TO ANSWER COMPLAINT

- ☐ by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.
- ☒ by placing a sealed envelope or package designated by UPS, with delivery fees paid or provided for, a true copy of each documents(s) above, in DLA Piper US LLP's mail room for collection, processing and delivery this same day to a deposit box or other facility regularly maintained by the express service carrier, or delivered to an authorized courier or driver authorized by the express service carrier to receive documents. I further declare that I am readily familiar with the business' practice for collection and processing of correspondence for delivery with express service carriers (i.e., FedEx, DHL, etc.); and that the correspondence shall be deposited with an express service carrier this same day in the ordinary course of business, to each addressee as set forth below.
- ☐ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Diego, California addressed as set forth below.
- ☐ by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.

Barron E. Ramos, Esq.
 Kristen E. Caverly
 Henderson & Caverly LLP
 P.O. Box 9144
 16236 San Dieguito Road, Suite 4-13
 Rancho Santa Fe, CA 92067
 Phone: (858) 756-6342
 Fax: (858) 756-4732

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing affidavit.

1 I declare under penalty of perjury under the laws of the State of California that the above
2 is true and correct.

3 Executed on August 31, 2007, at San Diego, California.

4 
5 Connie Garner

FILED
CIVIL BUSINESS OFFICE 12
COPY
2007 SEP -5 1 P 4: 11
CLERK-SUPERIOR COURT
SAN DIEGO COUNTY, CA

1 JEFFREY M. SHOHE (Bar No. 067529)
2 JULIE L. HUSSEY (Bar No. 237711)
3 CARRIE S. DOLTON (Bar No. 234298)
4 **DLA PIPER US LLP**
5 401 B Street, Suite 1700
San Diego, CA 92101-4297
Tel: 619.699.2700
Fax: 619.699.2701

6 Attorneys for Defendant
7 TIME WARNER ENTERTAINMENT-ADVANCE/
8 NEWHOUSE PARTNERSHIP, A NEW YORK
GENERAL PARTNERSHIP, THROUGH ITS SAN
DIEGO DIVISION, DBA TIME WARNER CABLE

9
10 SUPERIOR COURT OF CALIFORNIA
11 COUNTY OF SAN DIEGO

12 LEON ALPERT, an individual, on behalf
13 of himself, on behalf of all those similarly
14 situated, and on behalf of the general
public,

15 Plaintiffs,

16 v.

17 TIME WARNER CABLE, INC., a
18 Delaware corporation, and DOES 1 TO
100,

19 Defendants.
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28

CASE NO. GIC881621

**DEFENDANT TIME WARNER
ENTERTAINMENT-ADVANCE/
NEWHOUSE PARTNERSHIP, THROUGH
ITS SAN DIEGO DIVISION, DBA TIME
WARNER CABLE'S ANSWER TO
PLAINTIFF LEON ALPERT'S FIRST
AMENDED COMPLAINT**

Dept: 63
Judge: Luis R. Vargas

Complaint: March 13, 2007
FAC: May 16, 2007

Defendant Time Warner Entertainment-Advance/Newhouse Partnership, a New York general partnership, through its San Diego Division, dba Time Warner Cable ("TWC"), sued erroneously as Time Warner Cable, Inc., answers the unverified First Amended Complaint ("FAC") of Leon Alpert ("Plaintiff"), individually and on behalf of all those similarly situated, and on behalf of the general public as follows:

GENERAL DENIAL

Pursuant to California Code of Civil Procedure section 431.30, TWC denies generally and specifically each and every allegation contained in Plaintiff's unverified FAC. TWC further denies that Plaintiff, individually and on behalf of all others similarly situated, sustained any injuries or damages or is entitled to any of the relief sought in the FAC. TWC specifically denies that Plaintiff, or any class member has been damaged in the manner alleged, or in the sum or sums alleged or to be alleged, or in any many or sum, by any act of TWC.

AFFIRMATIVE DEFENSES

As a further and separate answer to Plaintiff's FAC, and by way of affirmative defenses, TWC alleges as follows:

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Claim for Section 17200)

Plaintiff's claim for unlawful, unfair, and/or deceptive business practices fails to state facts sufficient to constitute a cause of action against TWC under California Business and Professions Code section 17200.

SECOND AFFIRMATIVE DEFENSE

(Compliance with Law)

Plaintiff's FAC fails to state a claim for unlawful conduct under Business & Professions Code section 17200 because TWC completely complied with applicable law.

THIRD AFFIRMATIVE DEFENSE

(Justification of Practices)

TWC's business practices alleged in the FAC are not unfair, unlawful, or deceptive, or otherwise within the meaning of Business & Professions Code section 17200 in that the practices,

1 if any, were justified because they were made in a good faith effort to protect TWC's legitimate
2 business interests.

3 **FOURTH AFFIRMATIVE DEFENSE**

4 **(Good Faith)**

5 To the extent that any misstatements or omissions occurred as alleged by Plaintiff, and
6 TWC denies that any such misstatements or omissions occurred, TWC at all times acted in good
7 faith and did not directly or indirectly induce the making of any alleged misstatement or
8 omission.

9 **FIFTH AFFIRMATIVE DEFENSE**

10 **(Statutes Insufficiently Definite)**

11 Plaintiff's claims are barred in whole or in part because the applicable statutes are
12 insufficiently definite to provide adequate or fair notice of the conduct proscribed in violation of
13 the Due Process Clause of the Fifth Amendment to the United States Constitution and Article 1,
14 Section 7 of the California Constitution.

15 **SIXTH AFFIRMATIVE DEFENSE**

16 **(Unconstitutionality / Due Process)**

17 The California Unfair Business Practices Act (California Business & Professions Code
18 sections 17200 *et seq.*) is unconstitutional in that it violates the due process rights of TWC and/or
19 members of the general public.

20 **SEVENTH AFFIRMATIVE DEFENSE**

21 **(Preemption)**

22 Plaintiff's claims are preempted, in whole or in part, by federal law pursuant to the
23 Supremacy Clause of the United States Constitution.

24 **EIGHTH AFFIRMATIVE DEFENSE**

25 **(Mootness)**

26 Plaintiff's claims for injunctive or other equitable relief are barred as moot in whole or in
27 part.

28 /////

NINTH AFFIRMATIVE DEFENSE

(Lack of Standing)

Plaintiff, or some of them, is not a real party-in-interest in this action.

TENTH AFFIRMATIVE DEFENSE

(Inability to Meet Requirements to Maintain Class Action)

Plaintiff cannot meet the requirements of Code of Civil Procedure section 382, Civil Code section 1781 and corresponding case law to maintain a class action in that the purported class does not have sufficient numerosity, common issues of law and fact do not sufficiently predominate, the plaintiff class does not have sufficient commonality of injuries and damages, the named Plaintiff does not adequately represent the Plaintiff's class, there is no benefit to litigants and the Court in bringing this action as a class action, and class action status is not superior to bringing this action in the normal course of the judicial system

ELEVENTH AFFIRMATIVE DEFENSE

(Statute of Limitations)

Plaintiff's claims, or some of them, are barred by applicable statutes of limitations.

TWELFTH AFFIRMATIVE DEFENSE

(Estoppel)

TWC alleges on information and belief that Plaintiff, or some of them, have engaged in conduct and activities with respect to the matters alleged in the FAC by reason of which Plaintiff, or some of them, are estopped to obtain the requested relief.

THIRTEENTH AFFIRMATIVE DEFENSE

(Waiver)

TWC alleges on information and belief that Plaintiff, or some of them, waived their right to obtain the requested relief with respect to the matters alleged in the FAC.

FOURTEENTH AFFIRMATIVE DEFENSE

(Laches)

TWC alleges on information and belief that Plaintiff, or some of them, unreasonably and inexcusably delayed in bringing this action and as a result of such delay, TWC is substantially

1 prejudiced, and by reason thereof Plaintiff, or some of them, are barred by the doctrine of laches
2 from obtaining the requested relief.

3 **FIFTEENTH AFFIRMATIVE DEFENSE**

4 **(Failure to Mitigate Damages)**

5 Plaintiff, or some of them, failed to exercise reasonable care and diligence to avoid loss
6 and minimize damages and therefore they may not recover for losses which could have been
7 prevented by reasonable efforts on their part, or by expenditures which might reasonably have
8 been made; therefore their recovery, if any, should be reduced by the failure of them to mitigate
9 their damages, if any.

10 **SIXTEENTH AFFIRMATIVE DEFENSE**

11 **(Knowledge of Plaintiff)**

12 At the time Plaintiff, or some of them, purchased TWC's services as alleged in the FAC,
13 he had actual or constructive knowledge of facts alleged in the FAC and of facts concerning the
14 subject matter of the alleged untruths and omissions upon which liability is asserted in this action,
15 and made the purchases of services despite this knowledge.

16 **SEVENTEENTH AFFIRMATIVE DEFENSE**

17 **(No Claim for Fees, Costs and Interest)**

18 Plaintiff's FAC fails to state a claim against TWC upon which relief may be granted as to
19 costs, attorneys' fees, expenses, pre-judgment interest, post-judgment interest, disgorgement and
20 restitution.

21 **EIGHTEENTH AFFIRMATIVE DEFENSE**

22 **(Consent)**

23 The facts alleged in Plaintiff's FAC if true (which TWC denies), were consented to,
24 ratified, accepted and confirmed by Plaintiff, any class members and/or the general public.

25 **NINETEENTH AFFIRMATIVE DEFENSE**

26 **(Voluntary Payment Doctrine)**

27 Plaintiff's claims are barred by the voluntary payment doctrine because Plaintiff, or some
28 of them, voluntarily made payment to TWC, with knowledge of the necessary facts.

TWENTIETH AFFIRMATIVE DEFENSE

(Right to Assert Additional Defenses)

TWC presently has insufficient knowledge or information on which to form a belief as to whether it may have additional, as yet unstated, defenses available. TWC reserves the right to assert additional affirmative defenses in the event that discovery and/or investigation indicates that additional affirmative defenses would be appropriate.

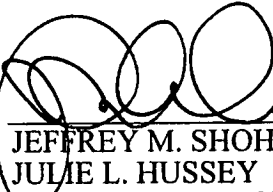
WHEREFORE, TWC prays for judgment against Plaintiffs as follows:

1. That Plaintiff takes nothing by way of their FAC;
2. That TWC be awarded judgment in their favor and against Plaintiffs;
3. That TWC be awarded costs of suit herein incurred;
4. That TWC be awarded reasonable attorneys' fees to the maximum extent allowed by law; and
5. For such other and further relief as the Court deems just and proper.

Dated: September 4, 2007

DLA PIPER US LLP

By


JEFFREY M. SHOHET
JULIE L. HUSSEY
CARRIE S. DOLTON
Attorneys for Defendant
TIME WARNER ENTERTAINMENT-
ADVANCE/NEWHOUSE PARTNERSHIP, A
NEW YORK GENERAL PARTNERSHIP,
THROUGH ITS SAN DIEGO DIVISION,
DBA TIME WARNER CABLE

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JANUARY DIVISION

2007 SEP -5 P 4:11

CLERK-SUPERIOR COURT
SAN DIEGO COUNTY, CA

1 JEFFREY M. SHOHET (Bar No. 067529)
JULIE L. HUSSEY (Bar No. 237711)
2 CARRIE S. DOLTON (Bar No. 234298)
DLA PIPER US LLP
3 401 B Street, Suite 1700
San Diego, CA 92101-4297
4 Tel: 619.699.2700
Fax: 619.699.2701
5

6 Attorneys for Defendant
TIME WARNER CABLE, INC.
7

8 SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF SAN DIEGO
10

11 LEON ALPERT, an individual, on behalf
of himself, on behalf of all those similarly
12 situated, and on behalf of the general
public,
13

14 Plaintiffs,
15

16 v.
17

18 TIME WARNER CABLE, INC., a
Delaware corporation, and DOES 1 TO
100,
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20 Defendants.
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CASE NO. GIC881621

PROOF OF SERVICE

Dept: 63
Judge: Luis R. Vargas

First Amended Complaint: May 16, 2007

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is DLA Piper US LLP, 401 B Street, Suite 1700, San Diego, California 92101. On September 5, 2007, I served the within document(s):

DEFENDANT TIME WARNER ENTERTAINMENT-ADVANCE/ NEWHOUSE PARTNERSHIP, THROUGH ITS SAN DIEGO DIVISION, DBA TIME WARNER CABLE'S ANSWER TO PLAINTIFF LEON ALPERT'S FIRST AMENDED COMPLAINT

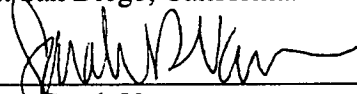
- ☐ by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.
- ☐ by placing a sealed envelope or package designated by UPS, with delivery fees paid or provided for, a true copy of each documents(s) above, in DLA Piper US LLP's mail room for collection, processing and delivery this same day to a deposit box or other facility regularly maintained by the express service carrier, or delivered to an authorized courier or driver authorized by the express service carrier to receive documents. I further declare that I am readily familiar with the business' practice for collection and processing of correspondence for delivery with express service carriers (i.e., FedEx, DHL, etc.); and that the correspondence shall be deposited with an express service carrier this same day in the ordinary course of business, to each addressee as set forth below.
- ☒ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Diego, California addressed as set forth below.
- ☐ by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.

Barron E. Ramos, Esq.
 Kristen E. Caverly
 Henderson & Caverly LLP
 P.O. Box 9144
 16236 San Dieguito Road, Suite 4-13
 Rancho Santa Fe, CA 92067
 Phone: (858) 756-6342
 Fax: (858) 756-4732

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing affidavit.

1 I declare under penalty of perjury under the laws of the State of California that the above
2 is true and correct.

3 Executed on September 5, 2007, at San Diego, California.

4 
5 Sarah Van

09/06/2007 14:34 858-756-4732

HENDERSON CAVERLY

PAGE 02/03

SEP 06 2007 9:47AM HP LASERJET 3200

P.2

1 **HENDERSON & CAVERLY LLP**
Kristen B. Caverly (State Bar No. 175070)
2 P.O. Box 9144 (All U.S. Mail)
16236 San Dieguito Road, Suite 4-13
3 Rancho Santa Fe, California 92067-9144
Tel.: (858) 756-6342
4 Fax: (858) 756-4732

5 Attorneys for Plaintiffs

6
7
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF SAN DIEGO**
10

11 LEON ALPERT, an individual,
on behalf of himself, on behalf of all those
12 similarly situated, and on behalf of the general
public,
13

14 Plaintiffs,

v.

15 TIME WARNER CABLE, INC., a Delaware
corporation, and DOES 1 TO 100,
16
17 Defendants.
18
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21

Case No. GIC 881621

CLASS ACTION

NOTICE OF ASSOCIATION OF COUNSEL

Case Filed: March 13, 2007

Dept: 63

Judge: Hon. Luis R. Vargas

Trial Date: None Set

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23
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27 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**
28

09/06/2007 14:34 858-756-4732

HENDERSON CAVERLY

PAGE 03/03

SEP 06 2007 9:47AM HP LASERJET 3200

p.3

1 The law firm of HENDERSON & CAVERLY LLP, attorneys of record for the plaintiffs,
2 hereby associates the law firm of BARRON E. RAMOS, Attorney at Law, A Professional
3 Corporation, 132 N. El Camino Real, # 303, Encinitas, California 92024, Phone (858) 349-6019,
4 Fax (760) 994-1354, as co-counsel.

5 Dated: September 6, 2007

HENDERSON & CAVERLY LLP

6
7
8 By: 
9

Kristen E. Caverly

10 Above Association Accepted.

11
12 Dated: September 6, 2007

BARRON E. RAMOS, ATTORNEY AT LAW

13
14 By: 
15

Barron E. Ramos

16 Attorneys for Plaintiffs
17
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21
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26
27
28

PROOF OF SERVICE

I am employed in the County of San Diego, California. I am over the age of 18 years and not a party to the within action. My business address is 132 N. El Camino Real, # 303, Encinitas, California 92024.

On September 6, 2007, I served the following documents:

NOTICE OF ASSOCIATION OF COUNSEL

CASE MANAGEMENT STATEMENT

on the parties in this action by placing a true copy thereof in a sealed envelope, addressed as follows:

Jeffrey M. Shohet
Julie L. Hussey
Carrie S. Dolton
DLA PIPER US LLP
401 B Street, Suite 1700
San Diego, CA 92101-4297
Facsimile: (619) 699-2701

*Attorneys for Time Warner Entertainment-
Advance NewHouse Partnership, A New York
General Partnership, Through its San Diego
Division d.b.a. Time Warner Cable*

(BY MAIL) I placed each such sealed envelope, with postage thereon fully prepaid for first-class mail, for collection and mailing at Henderson & Caverly LLP, Rancho Santa Fe, California, following ordinary business practices. I am familiar with the practice of Henderson & Caverly LLP for collection and processing of correspondence, said practice being that in the ordinary course of business, correspondence is deposited in the United States Postal service the same day as it is placed for collection.

☒ (BY FACSIMILE) I transmitted the above-listed document to the party listed above via facsimile. The transmission was reported complete and without error. The telephone number of the facsimile machine I used was (858) 720-0752.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at Del Mar, California on September 6, 2007.


Barron E. Ramos

CM-110

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Barron E. Ramos (179620) Attorney at Law, A Professional Corporation 132 N. El Camino Real, # 303, Encinitas, CA 92024		FOR COURT USE ONLY	
TELEPHONE NO.: (858) 349-6019 FAX NO. (Optional): E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): plaintiff Leon Alpert			
SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Diego STREET ADDRESS: 330 W. Broadway MAILING ADDRESS: CITY AND ZIP CODE: San Diego, CA 92101 BRANCH NAME: Hall of Justice			
PLAINTIFF/PETITIONER: Leon Alpert, et al. DEFENDANT/RESPONDENT: Time Warner			
CASE MANAGEMENT STATEMENT (Check one): <input checked="" type="checkbox"/> UNLIMITED CASE (Amount demanded exceeds \$25,000) <input type="checkbox"/> LIMITED CASE (Amount demanded is \$25,000 or less)		CASE NUMBER: GIC 881621	
A CASE MANAGEMENT CONFERENCE is scheduled as follows: Date: September 21, 2007 Time: 10:00 a.m. Dept.: 63 Div.: Room: Address of court (if different from the address above):			

CM-110

PLAINTIFF/PETITIONER: Leon Alpert, et al.	CASE NUMBER:
DEFENDANT/RESPONDENT: Time Warner	GIC 881621

4. b. Provide a brief statement of the case, including any damages. (If personal injury damages are sought, specify the injury and damages claimed, including medical expenses to date (indicate source and amount), estimated future medical expenses, lost earnings to date, and estimated future lost earnings. If equitable relief is sought, describe the nature of the relief.)

This is a class action for alleged overcharging where the class member's (subscriber's) HOA had contracted with Time Warner for basic cable services (also sometimes called "bulk multi-channel video services") and where the subscriber purchased additional cable and cable related services directly from Time Warner but was not provided a credit for already paying the for basic cable services ("HOA Standard Service") through the subscriber's HOA. Plaintiff seeks restitution and injunctive relief.

☐ (If more space is needed, check this box and attach a page designated as Attachment 4b.)

5. Jury or nonjury trial

The party or parties request ☒ a jury trial ☐ a nonjury trial (If more than one party, provide the name of each party requesting a jury trial):

6. Trial date

- a. ☐ The trial has been set for (date):
 b. ☒ No trial date has been set. This case will be ready for trial within 12 months of the date of the filing of the complaint (if not, explain):

Complex litigation may require more than one year to be ready for trial.

- c. Dates on which parties or attorneys will not be available for trial (specify dates and explain reasons for unavailability):

7. Estimated length of trial

The party or parties estimate that the trial will take (check one):

- a. ☒ days (specify number): 5
 b. ☐ hours (short causes) (specify):

8. Trial representation (to be answered for each party)

The party or parties will be represented at trial ☒ by the attorney or party listed in the caption ☐ by the following:

- a. Attorney:
 b. Firm:
 c. Address:
 d. Telephone number:
 e. Fax number:
 f. E-mail address:
 g. Party represented:

☐ Additional representation is described in Attachment 8.

9. Preference

☐ This case is entitled to preference (specify code section):

10. Alternative Dispute Resolution (ADR)

- a. Counsel ☒ has ☐ has not provided the ADR information package identified in rule 3.221 to the client and has reviewed ADR options with the client.
 b. ☐ All parties have agreed to a form of ADR. ADR will be completed by (date):
 c. ☐ The case has gone to an ADR process (indicate status):

CM-110

PLAINTIFF/PETITIONER: Leon Alpert, et al.	CASE NUMBER:
DEFENDANT/RESPONDENT: Time Warner	GIC 881621

10. d. The party or parties are willing to participate in (check all that apply):

- (1) ☒ Mediation
- (2) ☐ Nonbinding judicial arbitration under Code of Civil Procedure section 1141.12 (discovery to close 15 days before arbitration under Cal. Rules of Court, rule 3.822)
- (3) ☐ Nonbinding judicial arbitration under Code of Civil Procedure section 1141.12 (discovery to remain open until 30 days before trial; order required under Cal. Rules of Court, rule 3.822)
- (4) ☐ Binding judicial arbitration
- (5) ☐ Binding private arbitration
- (6) ☐ Neutral case evaluation
- (7) ☐ Other (specify):

- e. ☐ This matter is subject to mandatory judicial arbitration because the amount in controversy does not exceed the statutory limit.
- f. ☐ Plaintiff elects to refer this case to judicial arbitration and agrees to limit recovery to the amount specified in Code of Civil Procedure section 1141.11.
- g. ☐ This case is exempt from judicial arbitration under rule 3.811 of the California Rules of Court (specify exemption):

11. Settlement conference

- ☐ The party or parties are willing to participate in an early settlement conference (specify when):

12. Insurance

- a. ☐ Insurance carrier, if any, for party filing this statement (name):
- b. Reservation of rights: ☐ Yes ☐ No
- c. ☐ Coverage issues will significantly affect resolution of this case (explain):

13. Jurisdiction

Indicate any matters that may affect the court's jurisdiction or processing of this case, and describe the status.

- ☐ Bankruptcy ☐ Other (specify):

Status:

14. Related cases, consolidation, and coordination

- a. ☐ There are companion, underlying, or related cases.
 - (1) Name of case:
 - (2) Name of court:
 - (3) Case number:
 - (4) Status:
- ☐ Additional cases are described in Attachment 14a.
- b. ☐ A motion to ☐ consolidate ☐ coordinate will be filed by (name party):

15. Bifurcation

- ☐ The party or parties intend to file a motion for an order bifurcating, severing, or coordinating the following issues or causes of action (specify moving party, type of motion, and reasons):

16. Other motions

- ☐ The party or parties expect to file the following motions before trial (specify moving party, type of motion, and issues):
- Class certification

CM-110

PLAINTIFF/PETITIONER: Leon Alpert, et al.	CASE NUMBER:
DEFENDANT/RESPONDENT: Time Warner	GIC 881621

17. Discovery

- a. ☐ The party or parties have completed all discovery.
- b. ☒ The following discovery will be completed by the date specified (*describe all anticipated discovery*):

Party
 plaintiff
 plaintiff

Description
 written discovery and depositions (cert)
 written discovery and depositions (merits)

Date
 Feb 2008
 Aug 2008

- c. ☐ The following discovery issues are anticipated (*specify*):

18. Economic Litigation

- a. ☐ This is a limited civil case (i.e., the amount demanded is \$25,000 or less) and the economic litigation procedures in Code of Civil Procedure sections 90 through 98 will apply to this case.
- b. ☐ This is a limited civil case and a motion to withdraw the case from the economic litigation procedures or for additional discovery will be filed (*if checked, explain specifically why economic litigation procedures relating to discovery or trial should not apply to this case*):

19. Other Issues

- ☐ The party or parties request that the following additional matters be considered or determined at the case management conference (*specify*):

20. Meet and confer

- a. ☒ The party or parties have met and conferred with all parties on all subjects required by rule 3.724 of the California Rules of Court (*if not, explain*):

- b. After meeting and conferring as required by rule 3.724 of the California Rules of Court, the parties agree on the following (*specify*):

21. Case management orders

Previous case management orders in this case are (*check one*): ☒ none ☐ attached as Attachment 21.

22. Total number of pages attached (*if any*): _____

I am completely familiar with this case and will be fully prepared to discuss the status of discovery and ADR, as well as other issues raised by this statement, and will possess the authority to enter into stipulations on these issues at the time of the case management conference, including the written authority of the party where required.

Date:

Barron E. Ramos

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY)

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY)

☐ Additional signatures are attached

CM-110

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Jeffrey M. Shohet (Bar No. 067529)/Julie L. Hussey (Bar No. 237711) Carrie S. Dolton (Bar No. 234298) DLA Piper US LLP 401 B Street, Suite 1700 San Diego, CA 92101-4297 TELEPHONE NO.: 619 699-2700 FAX NO. (Optional): 619 699-2701 Time Warner Entertainment-Advance/Newhouse Partn. through its San Diego division dba Time Warner Cable ATTORNEY FOR (Name):		FOR COURT USE ONLY <div style="font-size: 48pt; text-align: center;">COPY</div> <div style="text-align: center;">FILED</div> <div style="text-align: center;">SEP 6 2007</div> <div style="text-align: center;">By: R. PORTILLO, Deputy</div>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO STREET ADDRESS: 330 West Broadway MAILING ADDRESS: CITY AND ZIP CODE: San Diego, CA 92101 BRANCH NAME:		
PLAINTIFF/PETITIONER: LEON ALPERT DEFENDANT/RESPONDENT: TIME WARNER CABLE, INC.		
CASE MANAGEMENT STATEMENT (Check one): <input checked="" type="checkbox"/> UNLIMITED CASE (Amount demanded exceeds \$25,000) <input type="checkbox"/> LIMITED CASE (Amount demanded is \$25,000 or less)		
		CASE NUMBER: GIC 881621

A CASE MANAGEMENT CONFERENCE is scheduled as follows:

Date: September 21, 2007 Time: 10:00 a.m. Dept.: C-63 Div.: Room:
 Address of court (if different from the address above):

INSTRUCTIONS: All applicable boxes must be checked, and the specified information must be provided.

- Party or parties (answer one):
 - ☒ This statement is submitted by party (name): Time Warner Entertainment-Advance/Newhouse Partnership,
 - ☐ This statement is submitted jointly by parties (names): through its San Diego division, dba Time Warner Cable, sued erroneously as Time Warner Cable, Inc.
- Complaint and cross-complaint (to be answered by plaintiffs and cross-complainants only)
 - The complaint was filed on (date):
 - ☐ The cross-complaint, if any, was filed on (date):
- Service (to be answered by plaintiffs and cross-complainants only)
 - ☐ All parties named in the complaint and cross-complaint have been served, or have appeared, or have been dismissed.
 - ☐ The following parties named in the complaint or cross-complaint
 - ☐ have not been served (specify names and explain why not):
 - ☐ have been served but have not appeared and have not been dismissed (specify names):
 - ☐ have had a default entered against them (specify names):
 - ☐ The following additional parties may be added (specify names, nature of involvement in case, and the date by which they may be served):
- Description of case
 - Type of case in ☒ complaint ☐ cross-complaint (describe, including causes of action):
 California Business & Professions Code section 17200 cause of action for unlawful, unfair, and/or deceptive business practices.

CASE MANAGEMENT STATEMENT

PLAINTIFF/PETITIONER: LEON ALPERT	CASE NUMBER: GIC 881621
DEFENDANT/RESPONDENT: TIME WARNER CABLE, INC.	

4. b. Provide a brief statement of the case, including any damages. *(If personal injury damages are sought, specify the injury and damages claimed, including medical expenses to date [indicate source and amount], estimated future medical expenses, lost earnings to date, and estimated future lost earnings. If equitable relief is sought, describe the nature of the relief.)* Plaintiff, individually and on behalf of a purported class, claims that Defendant Time Warner Cable violated Business & Professions Code section 17200 by unlawfully, unfairly, and/or deceptively 1) overcharging customers who are members of homeowners' associations for cable and cable related services by not providing such customers pricing that properly accounts for the cable services already provided under Time Warner Cable's contract with the customer's homeowners' association; 2) attempting to limit customers' rights to seek refunds for overcharges to 30 days after receipt of a bill. Plaintiff also claims that Time Warner Cable violated Business & Professions Code section 17200 by violating Civil Code sections 1770(a)(3), (13), and (19). Plaintiff demands restitution for alleged overcharges and an injunction prohibiting Time Warner Cable from engaging in such alleged unlawful, unfair, and deceptive business practices.

☐ *(If more space is needed, check this box and attach a page designated as Attachment 4b.)*

5. **Jury or nonjury trial**

The party or parties request ☐ a jury trial ☒ a nonjury trial *(if more than one party, provide the name of each party requesting a jury trial):*

6. **Trial date**

- a. ☐ The trial has been set for *(date)*:
 b. ☒ No trial date has been set. This case will be ready for trial within 12 months of the date of the filing of the complaint *(if not, explain)*: Although Plaintiff has designated the case as complex, Defendant believes, at this time, that the case will be ready for trial within 12 months.
 c. Dates on which parties or attorneys will not be available for trial *(specify dates and explain reasons for unavailability)*:

7. **Estimated length of trial**

The party or parties estimate that the trial will take *(check one)*:

- a. ☒ days *(specify number)*: 3 (if class is not certified)
 b. ☐ hours (short causes) *(specify)*:

8. **Trial representation (to be answered for each party)**

The party or parties will be represented at trial ☒ by the attorney or party listed in the caption ☐ by the following:

- a. Attorney:
 b. Firm:
 c. Address:
 d. Telephone number:
 e. Fax number:
 f. E-mail address:
 g. Party represented:

☐ Additional representation is described in Attachment 8.

9. **Preference**

☐ This case is entitled to preference *(specify code section)*:

10. **Alternative Dispute Resolution (ADR)**

- a. Counsel ☐ has ☒ has not provided the ADR information package identified in rule 3.221 to the client and has reviewed ADR options with the client.
 b. ☐ All parties have agreed to a form of ADR. ADR will be completed by *(date)*:
 c. ☐ The case has gone to an ADR process *(indicate status)*:

PLAINTIFF/PETITIONER: LEON ALPERT

CASE NUMBER:
GIC 881621

DEFENDANT/RESPONDENT: TIME WARNER CABLE, INC.

10. d. The party or parties are willing to participate in (check all that apply):

- (1) ☒ Mediation
(2) ☐ Nonbinding judicial arbitration under Code of Civil Procedure section 1141.12 (discovery to close 15 days before arbitration under Cal. Rules of Court, rule 3.822)
(3) ☐ Nonbinding judicial arbitration under Code of Civil Procedure section 1141.12 (discovery to remain open until 30 days before trial; order required under Cal. Rules of Court, rule 3.822)
(4) ☐ Binding judicial arbitration
(5) ☐ Binding private arbitration
(6) ☐ Neutral case evaluation
(7) ☐ Other (specify):

- e. ☐ This matter is subject to mandatory judicial arbitration because the amount in controversy does not exceed the statutory limit.
f. ☐ Plaintiff elects to refer this case to judicial arbitration and agrees to limit recovery to the amount specified in Code of Civil Procedure section 1141.11.
g. ☐ This case is exempt from judicial arbitration under rule 3.811 of the California Rules of Court (specify exemption):

11. Settlement conference

- ☒ The party or parties are willing to participate in an early settlement conference (specify when):
After initial exchange of discovery.

12. Insurance

- a. ☒ Insurance carrier, if any, for party filing this statement (name): ESIS
b. Reservation of rights: ☒ Yes ☐ No
c. ☐ Coverage issues will significantly affect resolution of this case (explain):

13. Jurisdiction

Indicate any matters that may affect the court's jurisdiction or processing of this case, and describe the status.

- ☐ Bankruptcy ☐ Other (specify):

Status:

14. Related cases, consolidation, and coordination

- a. ☐ There are companion, underlying, or related cases.
(1) Name of case:
(2) Name of court:
(3) Case number:
(4) Status:
☐ Additional cases are described in Attachment 14a
b. ☐ A motion to ☐ consolidate ☐ coordinate will be filed by (name party):

15. Bifurcation

- ☐ The party or parties intend to file a motion for an order bifurcating, severing, or coordinating the following issues or causes of action (specify moving party, type of motion, and reasons):

16. Other motions

- ☒ The party or parties expect to file the following motions before trial (specify moving party, type of motion, and issues):
Defendant will file a motion for summary judgment.

PLAINTIFF/PETITIONER: LEON ALPERT	CASE NUMBER: GIC 881621
DEFENDANT/RESPONDENT: TIME WARNER CABLE, INC.	

17. Discovery

- a. ☐ The party or parties have completed all discovery.
- b. ☒ The following discovery will be completed by the date specified (*describe all anticipated discovery*):

Party Description Date

Defendant is exploring opportunities to resolve the case without a trial. In the event the case proceeds, the following is the discovery Defendant proposes:

Plaintiff	Written Discovery	October 2007
Plaintiff	Depositions	November 2007
Selected Class Members	Document Discovery	January 2008
Third Party	Depositions	March 2008

- c. ☐ The following discovery issues are anticipated (*specify*):

18. Economic Litigation

- a. ☐ This is a limited civil case (i.e., the amount demanded is \$25,000 or less) and the economic litigation procedures in Code of Civil Procedure sections 90 through 98 will apply to this case.
- b. ☐ This is a limited civil case and a motion to withdraw the case from the economic litigation procedures or for additional discovery will be filed (*if checked, explain specifically why economic litigation procedures relating to discovery or trial should not apply to this case*):

19. Other issues

- ☐ The party or parties request that the following additional matters be considered or determined at the case management conference (*specify*):

20. Meet and confer

- a. ☒ The party or parties have met and conferred with all parties on all subjects required by rule 3.724 of the California Rules of Court (*if not, explain*):
- b. After meeting and conferring as required by rule 3.724 of the California Rules of Court, the parties agree on the following (*specify*):

21. Case management orders

Previous case management orders in this case are (*check one*): ☒ none ☐ attached as Attachment 21.

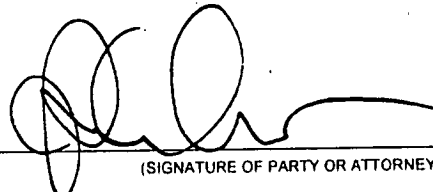
22. Total number of pages attached (*if any*): _____

I am completely familiar with this case and will be fully prepared to discuss the status of discovery and ADR, as well as other issues raised by this statement, and will possess the authority to enter into stipulations on these issues at the time of the case management conference, including the written authority of the party where required.

Date: 9/6/07

JEFFREY M. SHOHEIT

(TYPE OR PRINT NAME)

▶ 
(SIGNATURE OF PARTY OR ATTORNEY)

▶ _____
(SIGNATURE OF PARTY OR ATTORNEY)

☐ Additional signatures are attached

COPY

1 JEFFREY M. SHOHE (Bar No. 067529)
2 JULIE L. HUSSEY (Bar No. 237711)
3 CARRIE S. DOLTON (Bar No. 234298)
4 **DLA PIPER US LLP**
5 401 B Street, Suite 1700
6 San Diego, CA 92101-4297
7 Tel: 619.699.2700
8 Fax: 619.699.2701

F I L E D
Office of the Superior Court

6 Attorneys for Defendant
7 TIME WARNER CABLE, INC.

SEP 6 2007

By: R. PORTILLO, Deputy

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO

11 LEON ALPERT, an individual, on behalf
12 of himself, on behalf of all those similarly
13 situated, and on behalf of the general
14 public,

Plaintiffs,

v.

15 TIME WARNER CABLE, INC., a
16 Delaware corporation, and DOES 1 TO
17 100,

Defendants.

CASE NO. GIC881621

PROOF OF SERVICE

Dept: 63
Judge: Luis R. Vargas

First Amended Complaint: May 16, 2007

1 I am a resident of the State of California, over the age of eighteen years, and not a party to
 2 the within action. My business address is DLA Piper US LLP, 401 B Street, Suite 1700,
 3 San Diego, California 92101. On September 6, 2007, I served the within document(s):

4 **CASE MANAGEMENT STATEMENT**

5 ☐ by transmitting via facsimile the document(s) listed above to the fax number(s) set
 6 forth below on this date before 5:00 p.m.

7 ☐ by placing a sealed envelope or package designated by UPS, with delivery fees
 8 paid or provided for, a true copy of each documents(s) above, in DLA Piper US
 9 LLP's mail room for collection, processing and delivery this same day to a deposit
 10 box or other facility regularly maintained by the express service carrier, or
 11 delivered to an authorized courier or driver authorized by the express service
 12 carrier to receive documents. I further declare that I am readily familiar with the
 13 business' practice for collection and processing of correspondence for delivery
 14 with express service carriers (i.e., FedEx, DHL, etc.); and that the correspondence
 15 shall be deposited with an express service carrier this same day in the ordinary
 16 course of business, to each addressee as set forth below.

17 ☒ by placing the document(s) listed above in a sealed envelope with postage thereon
 18 fully prepaid, in the United States mail at San Diego, California addressed as set
 19 forth below.

20 ☐ by personally delivering the document(s) listed above to the person(s) at the
 21 address(es) set forth below.

22 Barron E. Ramos, Esq.
 23 Kristen E. Caverly
 24 Henderson & Caverly LLP
 25 P.O. Box 9144
 26 16236 San Dieguito Road, Suite 4-13
 27 Rancho Santa Fe, CA 92067
 28 Phone: (858) 756-6342
 Fax: (858) 756-4732


I am readily familiar with the firm's practice of collection and processing correspondence
 for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same
 day with postage thereon fully prepaid in the ordinary course of business. I am aware that on
 motion of the party served, service is presumed invalid if postal cancellation date or postage
 meter date is more than one day after date of deposit for mailing affidavit.

////

////

1 I declare under penalty of perjury under the laws of the State of California that the above
2 is true and correct.

3 Executed on September 6, 2007, at San Diego, California.

4 
5 Sarah Van

1 JEFFREY M. SHOHE (Bar No. 067529)
2 JULIE L. HUSSEY (Bar No. 237711)
3 CARRIE S. DOLTON (Bar No. 234298)
4 DLA PIPER US LLP
5 401 B Street, Suite 1700
6 San Diego, CA 92101-4297
7 Tel: 619.699.2700
8 Fax: 619.699.2701

F I L E D
Clerk of the Superior Court

SEP 07 2007

By: P. ASHWORTH, Deputy

6 Attorneys for Defendant
7 TIME WARNER CABLE, INC.

8 SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF SAN DIEGO

11 LEON ALPERT, an individual, on behalf
12 of himself, on behalf of all those similarly
13 situated, and on behalf of the general
14 public,

13 Plaintiffs,

14 v.

15 TIME WARNER CABLE, INC., a
16 Delaware corporation, and DOES 1 TO
17 100,

18 Defendants.

CASE NO. GIC881621

**[PROPOSED] ORDER EXTENDING
DEADLINE TO ANSWER COMPLAINT**

Dept: 63
Judge: Luis R. Vargas

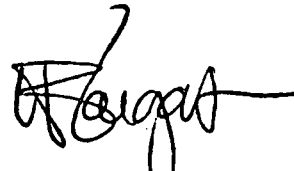
First Amended Complaint: May 16, 2007

19 **IT IS HEREBY ORDERED** that:

20 By stipulation of the parties, Defendant's Answer to Plaintiff's First Amended shall
21 be filed and served on or before September 5, 2007.

22 **IT IS SO ORDERED.**

23 Dated: SEP 07 2007

24 
25 HON. LUIS R. VARGAS
26 Judge of the Superior Court

SEP 12 2007 9:40AM LASERJET 3200

P.2

SEP-12-2007 08:07 AM

P.02

SEP 10 2007 3:22PM HP LASERJET 3200

P.3

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, title, firm name, and address) Barron E. Ramos (179620) Attorney at Law, A Professional Corporation 132 N. El Camino Real, # 303, Encinitas, CA 92024 TELEPHONE NO: 858-349-6019 FAX NO. (optional) E-MAIL ADDRESS (optional): barron@yourclasscounsel.com ATTORNEY FOR (Name): plaintiff Leon Alpert		FOR COURT USE ONLY CRIME NUMBER: GIC 881621
SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Diego STREET ADDRESS: 330 W. Broadway MAILING ADDRESS: CITY AND ZIP CODE: San Diego, CA 92101 BRANCH NAME: Hall of Justice		
CASE NAME: Alpert v. Time Warner		
SUBSTITUTION OF ATTORNEY—CIVIL (Without Court Order)		

THE COURT AND ALL PARTIES ARE NOTIFIED THAT (name):

makes the following substitution:

1. Former legal representative ☐ Party is representing self ☒ Attorney (name) Kristen E. Caverly
 2. New legal representative ☐ Party is representing self ☒ Attorney
 a. Name: Barron E. Ramos b. State Bar No. (if applicable): 179620
 c. Address (number, street, city, ZIP, and law firm name, if applicable):
 132 N. El Camino Real, # 303, Encinitas, CA 92024

d. Telephone No. (include area code): 858-349-6019

3. The party making this substitution is a ☒ plaintiff ☐ defendant ☐ petitioner ☐ respondent ☐ other (specify):

NOTICE TO PARTIES APPLYING TO REPRESENT THEMSELVES		
<ul style="list-style-type: none"> Guardian Conservator Trustee 	<ul style="list-style-type: none"> Personal Representative Probate Referee Corporation 	<ul style="list-style-type: none"> Guardian ad litem Unincorporated association
If you are applying as one of the parties on this list, you may NOT act as your own attorney in most cases. Use this form to substitute one attorney for another attorney. SEEK LEGAL ADVICE BEFORE APPLYING TO REPRESENT YOURSELF.		

NOTICE TO PARTIES WITHOUT ATTORNEYS
 A party representing himself or herself may wish to seek legal assistance. Failure to take timely and appropriate action in this case may result in serious legal consequences.

4. I consent to this substitution.

Date: September 10, 2007

Leon Alpert

(TYPE OR PRINT NAME)


 (SIGNATURE OF PARTY)

5. ☒ I consent to this substitution.

Date: September 12, 2007

Kristen E. Caverly, Henderson & Caverly LLP

(TYPE OR PRINT NAME)


 (SIGNATURE OF FORMER ATTORNEY)

6. ☒ I consent to this substitution.

Date: September 11, 2007

Barron E. Ramos, Attorney at Law, APC

(TYPE OR PRINT NAME)


 (SIGNATURE OF NEW ATTORNEY)

(file reverse for proof of service by mail)

Page 1 of 2

POS-030

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): KRISTEN E. CAVERLY, ESQ., SBN 175070 HENDERSON & CAVERLY LLP PO BOX 9144 (All U.S. Mail) 16236 San Dieguito Rd., Ste. 4-13 Rancho Santa Fe, CA 92067-9144 TELEPHONE NO.: 858.756.6342 FAX NO. (Optional): 858.756.4732 E-MAIL ADDRESS (Optional): kcaverly@hcesq.com ATTORNEY FOR (Name): Plaintiff LEON ALPERT		FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO STREET ADDRESS: 330 W BROADWAY MAILING ADDRESS: CITY AND ZIP CODE: SAN DIEGO CA 92101 BRANCH NAME: CENTRAL DIVISION		
PETITIONER/PLAINTIFF: LEON ALPERT RESPONDENT/DEFENDANT: TIME WARNER CABLE, INC.		
PROOF OF SERVICE BY FIRST-CLASS MAIL—CIVIL		CASE NUMBER: GIC 881621

(Do not use this Proof of Service to show service of a Summons and Complaint.)

1. I am over 18 years of age and **not a party to this action**. I am a resident of or employed in the county where the mailing took place.
2. My residence or business address is: 16236 San Dieguito Rd., Ste. 4-13, Rancho Santa Fe, CA 92067-9144
3. On (date): 09/12/2007 I mailed from (city and state): Rancho Santa Fe, CA the following documents (specify):

SUBSTITUTION OF ATTORNEY - CIVIL (without Court Order)

- ☐ The documents are listed in the *Attachment to Proof of Service by First-Class Mail—Civil (Documents Served)* (form POS-030(D)).
4. I served the documents by enclosing them in an envelope and (check one):
- a. ☐ **depositing** the sealed envelope with the United States Postal Service with the postage fully prepaid.
- b. ☐ **placing** the envelope for collection and mailing following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.
5. The envelope was addressed and mailed as follows:
- a. **Name** of person served:
- b. **Address** of person served:

- ☒ The name and address of each person to whom I mailed the documents is listed in the *Attachment to Proof of Service by First-Class Mail—Civil (Persons Served)* (POS-030(P)).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: September , 2007.

Michelle J. Dunn

(TYPE OR PRINT NAME OF PERSON COMPLETING THIS FORM)

(SIGNATURE OF PERSON COMPLETING THIS FORM)

POS-030(P)

SHORT TITLE: Leon Alpert v. Time Warner Cable, Inc.	CASE NUMBER: GIC 881621
--	----------------------------

ATTACHMENT TO PROOF OF SERVICE BY FIRST-CLASS MAIL—CIVIL (PERSONS SERVED)*(This Attachment is for use with form POS-030)***NAME AND ADDRESS OF EACH PERSON SERVED BY MAIL:**Name of Person ServedAddress (number, street, city, and zip code)

JEFFREY M SHOHEE ESQ JULIE L HUSSEY ESQ CARRIE S DOLTON ESQ	DLA PIPER US LLP 401 B ST STE 1700 SAN DIEGO CA 92101-4297
BARRON E RAMOS ESQ LAW OFFICES	132 N EL CAMINO REAL #303 ENCINITAS CA 92024

BARRON E. RAMOS (State Bar No. 179620)
Attorney at Law, A Professional Corporation
132 N. El Camino Real, # 303
Encinitas, California 92024
Tel.: (858) 349-6019/Fax: (760) 994-1354

CLARK & MARKHAM
David R. Markham (State Bar No. 071814)
R. Craig Clark (State Bar No. 129219)
James M. Treglio (State Bar No. 228077)
401 West "A" Street, Suite 2200
San Diego, CA 92101
Telephone: (619) 239-1321
Facsimile: (619) 239-5888

Attorneys for plaintiff and the Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

LEON ALPERT, an individual,
on behalf of himself, on behalf of all those
similarly situated, and on behalf of the general
public,

Plaintiffs,

v.

TIME WARNER CABLE, INC., a Delaware
corporation, and DOES 1 TO 100,

Defendants.

) Case No. GIC 881621

) **CLASS ACTION**

) **NOTICE OF ASSOCIATION OF COUNSEL**

) Case Filed: March 13, 2007

) Dept: 63

) Judge: Hon. Luis R. Vargas

) Trial Date: None Set

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

1 The law firm of BARRON E. RAMOS, Attorney at Law, APC, attorneys of record for the
2 plaintiffs, hereby associates the law firm of CLARK & MARKHAM, David R. Markham (State
3 Bar No. 071814), 401 West "A" Street, Suite 2200, San Diego, CA 92101, as co-counsel.

4
5 Dated: September 12, 2007.

BARRON E. RAMOS
Attorney at Law, APC

6
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8 By: 

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Barron E. Ramos

PROOF OF SERVICE

I am employed in the County of San Diego, California. I am over the age of 18 years and not a party to the within action. My business address is 132 N. El Camino Real, # 303, Encinitas, California 92024.

On September 12, 2007, I served the following documents:

NOTICE OF ASSOCIATION OF COUNSEL

on the parties in this action by placing a true copy thereof in a sealed envelope, addressed as follows:

Jeffrey M. Shohet
Julie L. Hussey
Carrie S. Dolton
DLA PIPER US LLP
401 B Street, Suite 1700
San Diego, CA 92101-4297
Facsimile: (619) 699-2701

*Attorneys for Time Warner Entertainment-
Advance NewHouse Partnership, A New York
General Partnership, Through its San Diego
Division d.b.a. Time Warner Cable*

X (BY MAIL) I placed each such sealed envelope, with postage thereon fully prepaid for first-class mail, for collection and mailing at 132 N. El Camino Real, # 303, Encinitas, California 92024, following ordinary business practices. I am familiar with the practice of collection and processing of correspondence, said practice being that in the ordinary course of business, correspondence is deposited in the United States Postal service the same day as it is placed for collection.

(BY FACSIMILE) I transmitted the above-listed document to the party listed above via facsimile. The transmission was reported complete and without error. The telephone number of the facsimile machine I used was (858) 720-0752.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at Del Mar, California on September 12, 2007.


Barron E. Ramos

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

STREET ADDRESS: 330 West Broadway

MAILING ADDRESS: 330 West Broadway

CITY AND ZIP CODE: San Diego, CA 92101

BRANCH NAME: Central

TELEPHONE NUMBER: (619) 685-6064

PLAINTIFF(S) / PETITIONER(S): LEON ALPERT

DEFENDANT(S) / RESPONDENT(S): Time Warner Entertainment-Advance Newhouse Partnership

ALPERT VS TIME WARNER CABLE INC

NOTICE OF RESCHEDULED HEARING

CASE NUMBER:

GIC881621

Notice is given that the hearing in the above-entitled case has been rescheduled from 09/21/2007 10:00 AM to date and time shown below. All inquiries regarding this notice should be referred to the court listed above.

TYPE OF HEARING

Civil Case Management Conference

DATE

12/21/2007

TIME

10:00 am

DEPT

C-63

JUDGE

Luis R. Vargas

Counsel: Check service list. If you have brought a party into this case who is not included in the service list, San Diego Superior Court Local Rules, Division II, requires you to serve the party with a copy of this notice.

A case management statement must be completed by counsel for all parties or parties in pro per and timely filed with the court at least 15 days prior to the initial case management conference. (San Diego Local Rules, Division II, CRC Rule 212).

All counsel of record or parties in pro per shall appear at the Case Management Conference, be familiar with the case, and be fully prepared to participate effectively in the hearing, including discussions of ADR options.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO


Central
330 West Broadway
San Diego, CA 92101

SHORT TITLE: ALPERT vs TIME WARNER CABLE INC

CLERK'S CERTIFICATE OF SERVICE BY MAIL

CASE NUMBER:
GIC881621

I certify that I am not a party to this cause. I certify that a true copy of the NOTICE OF RESCHEDULED HEARING was mailed following standard court practices in a sealed envelope with postage fully prepaid, addressed as indicated below. The mailing and this certification occurred at San Diego, California, on 09/25/2007.

Clerk of the Court, by: , Deputy

DAVID R. MARKHAM
401 W A Street 2200
CLARK & MARKHAM
San Diego, CA 92101

BARRON E RAMOS
132 N. El Camino Real 303
Encinitas, CA 92024

Julie L. Hussey
401 B Street suite 1700
DLA PIPER US LLP
San Diego, CA 92101

KRISTEN E CAVERLY
P. O. Box 9144
Rancho Santa Fe, CA 92067-9144

SUPERIOR COURT OF CALIFORNIA
SAN DIEGO COUNTY

330 West Broadway
San Diego, CA 92101

ADDRESS SERVICE REQUESTED

338.CRT37-20070925.S11

Julie L. Hussey
401 B Street suite 1700
DLA PIPER US LLP
San Diego, CA 92101



BARRON E. RAMOS

Attorney at Law, A Professional Corporation
Barron E. Ramos (State Bar No. 179620)
132 N. El Camino Real, # 303
Encinitas, California 92024
Telephone: (760) 274-6438
Facsimile: (760) 994-1354

CLARK & MARKHAM

David R. Markham (State Bar No. 071814)
R. Craig Clark (State Bar No. 129219)
James M. Treglio (State Bar No. 228077)
401 West "A" Street, Suite 2200
San Diego, CA 92101
Telephone: (619) 239-1321
Facsimile: (619) 239-5888

Attorneys for plaintiff and the Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

LEON ALPERT, an individual,
on behalf of himself, on behalf of all those
similarly situated, and on behalf of the general
public,

Plaintiffs,

v.

TIME WARNER CABLE, INC., a Delaware
corporation, and DOES 1 TO 100,

Defendants.

) Case No. GIC 881621

) **CLASS ACTION**

) **NOTICE OF CHANGE IN CASE
MANAGEMENT CONFERENCE**

) Dept: 63

) Judge: Hon. Luis R. Vargas

) Trial Date: None Set

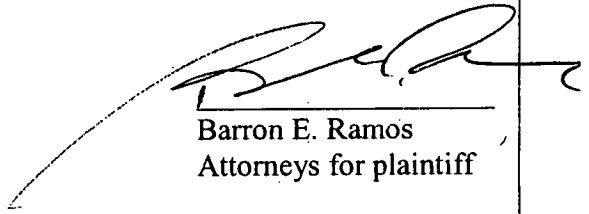
) Case Filed: March 13, 2007

TO THE COURT AND ALL INTERESTED PARTIES:

1 PLEASE TAKE NOTICE THAT, on the Court's own motion, the Case Management
2 Conference set for December 21, 2007, at 10:00 a.m., has been changed to January 11, 2008, at
3 10:00 a.m.

4 Clerk of the Court requested that plaintiff's counsel provide notice of the change.
5

6
7
8 Dated: November 29, 2007


Barron E. Ramos
Attorneys for plaintiff

I am employed in the County of San Diego, California. I am over the age of 18 years and not a party to the within action. My business address is 132 N. El Camino Real, # 303, Encinitas, California 92024.

On November 29, 2007, I served the following documents:

on the parties in this action by placing a true copy thereof in a sealed envelope, addressed as follows:

Jeffrey M. Shohet
Julie L. Hussey
Carrie S. Dolton
DLA PIPER US LLP
401 B Street, Suite 1700
San Diego, CA 92101-4297
Facsimile: (619) 764-6644

*Attorneys for Time Warner Entertainment-
Advance NewHouse Partnership, A New York
General Partnership, Through its San Diego
Division d.b.a. Time Warner Cable*

X (BY MAIL) I placed each such sealed envelope, with postage thereon fully prepaid for first-class mail, for collection and mailing at 132 N. El Camino Real, # 303, Encinitas, California 92024, following ordinary business practices. I am familiar with the practice of collection and processing of correspondence, said practice being that in the ordinary course of business, correspondence is deposited in the United States Postal service the same day as it is placed for collection.

X (BY FACSIMILE) I transmitted the above-listed document to the party listed above via facsimile. The transmission was reported complete and without error. The telephone number of the facsimile machine I used was (760) 274-6438.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at Encinitas, California on November 29, 2007.

Barron E. Ramos

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

STREET ADDRESS: 330 West Broadway

MAILING ADDRESS: 330 West Broadway

CITY AND ZIP CODE: San Diego, CA 92101

BRANCH NAME: Central

TELEPHONE NUMBER: (619) 685-6064

PLAINTIFF(S) / PETITIONER(S): LEON ALPERT

DEFENDANT(S) / RESPONDENT(S): Time Warner Entertainment-Advance Newhouse Partnership

ALPERT VS TIME WARNER CABLE INC

NOTICE OF RESCHEDULED HEARING

CASE NUMBER:

GIC881621

Notice is given that the hearing in the above-entitled case has been rescheduled from 12/21/2007 10:00 AM to date and time shown below. All inquiries regarding this notice should be referred to the court listed above.

TYPE OF HEARING

Civil Case Management Conference

DATE

01/11/2008

TIME

10:00 am

DEPT

C-63

JUDGE

Luis R. Vargas

Counsel: Check service list. If you have brought a party into this case who is not included in the service list, San Diego Superior Court Local Rules, Division II, requires you to serve the party with a copy of this notice.

A case management statement must be completed by counsel for all parties or parties in pro per and timely filed with the court at least 15 days prior to the initial case management conference. (San Diego Local Rules, Division II, CRC Rule 212).

All counsel of record or parties in pro per shall appear at the Case Management Conference, be familiar with the case, and be fully prepared to participate effectively in the hearing, including discussions of ADR options.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

Central
330 West Broadway
San Diego, CA 92101

SHORT TITLE: ALPERT vs TIME WARNER CABLE INC

CLERK'S CERTIFICATE OF SERVICE BY MAIL

CASE NUMBER:

GIC881621

I certify that I am not a party to this cause. I certify that a true copy of the NOTICE OF RESCHEDULED HEARING was mailed following standard court practices in a sealed envelope with postage fully prepaid, addressed as indicated below. The mailing and this certification occurred at San Diego, California, on 11/29/2007.

Clerk of the Court, by: _____

C. Chealy
C. Chealy

_____, Deputy

DAVID R. MARKHAM
401 W A Street 2200
CLARK & MARKHAM
San Diego, CA 92101

BARRON E RAMOS
132 N. El Camino Real 303
Encinitas, CA 92024

Julie L. Hussey
401 B Street suite 1700
DLA PIPER US LLP
San Diego, CA 92101

SUPERIOR COURT OF CALIFORNIA
SAN DIEGO COUNTY
330 West Broadway
San Diego, CA 92101

ADDRESS SERVICE REQUESTED

320.CRT37-20071129.S11

Julie L. Hussey
401 B Street suite 1700
DLA PIPER US LLP
San Diego, CA 92101



BARRON E. RAMOS

Attorney at Law, A Professional Corporation

Barron E. Ramos (State Bar No. 179620)

132 N. El Camino Real, # 303

Encinitas, California 92024

Telephone: (760) 274-6438

Facsimile: (760) 994-1354

CLARK & MARKHAM

David R. Markham (State Bar No. 071814)

R. Craig Clark (State Bar No. 129219)

James M. Treglio (State Bar No. 228077)

401 West "A" Street, Suite 2200

San Diego, CA 92101

Telephone: (619) 239-1321

Facsimile: (619) 239-5888

Attorneys for plaintiff and the Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA**COUNTY OF SAN DIEGO**

LEON ALPERT, an individual,) Case No. GIC 881621
on behalf of himself, on behalf of all those)
similarly situated, and on behalf of the general) **CLASS ACTION**
public,)

Plaintiffs,) **PLAINTIFF'S NOTICE OF MOTION AND**
v.) **MOTION TO COMPEL COMPLIANCE;**
TIME WARNER CABLE, INC., a Delaware) **SEPARATE STATEMENT OF ITEMS IN**
corporation, and DOES 1 TO 100,) **DISPUTE; DECLARATION OF BARRON**
Defendants.) **E. RAMOS IN SUPPORT OF MOTION; and**
) **REQUEST FOR SANCTIONS IN THE SUM**
) **OF \$ 9,687.50**

) Date: March 14, 2008

) Time: 10:00 a.m.

) Dept: 63

) Judge: Hon. Luis R. Vargas

) Trial Date: None Set

) Case Filed: March 13, 2007

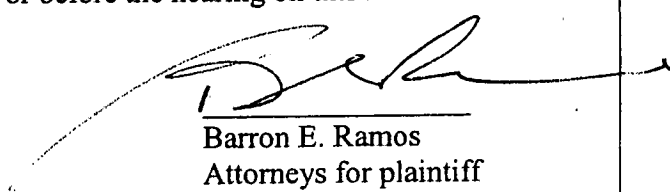
TO THE COURT AND ALL INTERESTED PARTIES:

1 PLEASE TAKE NOTICE THAT on March 14, 2008, at 10:00 a.m., or as soon thereafter as
2 counsel may be heard, in Department 63 of the California Superior Court for the County of Diego,
3 located at 330 West Broadway, San Diego, California 92101, the Honorable Luis R. Vargas
4 presiding, plaintiff will move the Court for an Order compelling compliance with Time Warner's
5 Response to Request for Production of Documents and seeking sanctions in the sum of \$ 9,687.50.
6

7 Good cause exists to bring this Motion as the documents sought are necessary to bring
8 plaintiff's motion to certify this as a class action, there is no justifiable reason for withholding the
9 documents, Time Warner had previously agreed to produce the documents in its Response to
10 plaintiff's Request for Production, and plaintiff's counsel has exhausted the meet and confer
11 process attempting to avoid this motion.
12

13 This Motion is based upon this Notice of Motion, the Brief Memorandum of Points and
14 Authorities submitted herewith, the separate statement of items in dispute, the accompanying
15 declaration of Barron E. Ramos, the other papers on file in this action, and such other materials or
16 arguments of counsel that the Court may receive at or before the hearing on this Motion.

17
18 Dated: December 1, 2007


Barron E. Ramos
Attorneys for plaintiff

1 **I. BRIEF POINTS AND AUTHORITIES IN SUPPORT OF MOTION AND**

2 **AWARD OF MONETARY SANCTION**

3 CCP 2031.320(a) provides that if a party filing a response to a demand for inspection
4 thereafter fails to permit the inspection in accordance with that party's statement of compliance, the
5 party demanding the inspection may move for an order compelling compliance. The documents at
6 issue in this Motion, which Time Warner agreed to produce in its Response to plaintiff's Request
7 for Production, are those that reflect the pricing for Time Warner's services to California HOA
8 customers (outside of the San Diego/Desert Cities area) during the class period.¹

9
10 To date, Time Warner has refused to produce any HOA rates other than the HOA rates
11 applicable to the Desert Cities and San Diego. However, Mr. Alpert's class is statewide, not
12 merely limited to San Diego or the Desert Cities. Paragraph 4 of plaintiff's FAC defines the class:

13 4. The class in this case is comprised of all TIME WARNER
14 subscribers in the State of California during the four (4) years prior to
15 the filing of this complaint who were members of homeowners
16 associations (HOAs) and/or tenants of such members, where the
17 subscriber's HOA had contracted with TIME WARNER for basic
18 cable services (also sometimes called "bulk multi-channel video
19 services") and where the subscriber purchased additional cable and
20 cable related services directly from TIME WARNER but was not
21 provided a credit for already paying the for basic cable services
22 ("HOA Standard Service") through the subscriber's HOA.
23
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26
27 ¹ To the extent Time Warner takes the position that it has not agreed to produce said
28 documents, notwithstanding its Response that it would produce the documents, this Motion can and
should be considered a Motion to Compel Further Responses under CCP section 2031.310.

1 Time Warner's attempt to narrow the class to San Diego and the Desert Cities is improper
2 and is frustrating plaintiff's discovery. The documents sought are plainly relevant and necessary to
3 establish the essential element of commonality among class members that HOA pricing and so-
4 called "retail" pricing differed during the class period.

5 As part of its Response agreeing to produce the documents requested, Time Warner
6 asserted various (mostly nuisance) objections, but did not refuse to produce the documents
7 notwithstanding asserting those objections. For example, Time Warner claimed that the documents
8 sought may be "confidential" in nature, but has since made plain that it is not withholding the
9 documents based upon the purported confidential nature of those documents or because Time
10 Warner is awaiting agreement on a potential protective order.

11 Not wanting to bother the Court with this matter, plaintiff's counsel repeatedly attempted to
12 work with Time Warner's unwillingness to provide the requested documents by asking if Time
13 Warner would, alternatively, agree to stipulate that what is true in San Diego and the Desert Cities
14 is true throughout the State: that Time Warner had different pricing schemes available for HOA
15 customers (i.e., lower priced packages and services) than for so-called "retail" customers. Time
16 Warner refused to agree to the stipulation.

17 In sum, Time Warner has already agreed to produce the documents at issue in this Motion,
18 but has since refused to do so. Time Warner has not conditioned the production on a protective
19 order.² Rather, Time Warner has taken the position that it need not, and indeed will not, produce
20

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25 ² Although Time Warner is not conditioning production of documents on entry of a
26 protective order and has not moved to obtain one, plaintiff's counsel is nonetheless willing to enter
27 into such an order provided it is not unduly burdensome. The parties are in discussion at the time
28 of this writing to determine if such an order is truly necessary and can be agreed upon, but Time
Warner has made clear it is not withholding any documents based upon the need for a protective
order. In any event, pricing documents, which are the subject of this Motion, could never be

1 what it has already agreed to produce. Moreover, Time Warner will not stipulate that it charged
2 two different pricing schemes in California during the class period – thereby necessitating
3 production of these documents so that plaintiff can move to certify the class.

4 II. SANCTIONS


5 Mr. Alpert and his counsel have been more than patient attempting to avoid this Motion. In
6 fact, initially unaware that there is no time restriction on a motion to compel compliance and
7 believing a 45 day time limit to notice this motion was required, Alpert's counsel repeatedly asked
8 Time Warner's counsel for an extension of time to bring a motion in an effort to work this out
9 informally. Notwithstanding repeated requests, Time Warner would agree to only a one week
10 extension a few days before this motion was believed to be due, choosing instead to jam Mr. Alpert
11 and his counsel into bringing this motion (even Time Warner apparently believed it was subject to
12 the 45 day rule as well). Time Warner is clearly not interested in taking the time necessary to
13 resolve discovery disputes informally.
14

15 Although Alpert's counsel prefers not to burden the Court with discovery disputes, this
16 Motion was unavoidable as the documents sought are essential to plaintiff's upcoming Motion to
17 Certify. But just as this motion is a burden on the Court, so too it is a burden on Mr. Alpert and his
18 counsel for incurring the time and expense associated with bringing the motion, particularly since
19 Time Warner agreed to produce the documents. Accordingly, sanctions in this case are,
20 unfortunately, warranted, and will hopefully send a message to Time Warner that it cannot
21 continue to refuse to cooperate in the discovery process. It is one thing for Time Warner to hide its
22 HOA pricing from its own customers – a central allegation in this case – it is quite another to hide
23 it from plaintiff and this Court.
24

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27 considered "confidential" – unless, of course, it is Time Warner's position that it wants to continue
28 to conceal its HOA pricing from those HOA customers, just as it did from Alpert.

1 Alpert's counsel bills at a rate of \$ 425 per hour and has expended 22.7 hours preparing this
2 motion, including the anticipated time necessary to file a reply and attend the hearing. Alpert also
3 incurred a filing fee of \$ 40. Alpert therefore seeks sanctions against Time Warner in the sum of
4 \$ 9,687.50.
5

6
7 Dated: December 4, 2007


Barron E. Ramos
Attorneys for plaintiff

1 **SEPARATE STATEMENT OF ITEMS IN DISPUTE**

2 The following are certain of the Inspection Demands verbatim, the responses received
3 verbatim and the reasons why compliance (i.e., production) should be compelled.

4 **REQUEST NO. ONE:**

5 Please produce all DOCUMENTS which depict pricing for all of YOUR products and
6 services, including any bundled packages, to RESIDENTS. (RESIDENTS is defined as
7 "occupants of properties during the time period from March 13, 2003 to March 13, 2007 that were
8 part of a homeowners' association (HOA) in California with whom YOU had entered into a
9 "Residential Bulk Services Agreement" to provide basic cable services to the HOA members.").

10 **RESPONSE TO REQUEST NO. ONE:**

11 TWC objects to this Request as vague, ambiguous, overbroad, unduly burdensome and
12 oppressive, and is not reasonably calculated to lead to the discovery of admissible information.
13 The phrase "depict pricing" vaguely requests every document that refers to pricing. TWC objects
14 to the extent that this request seeks confidential trade secret information regarding negotiated
15 prices for bulk rate customers. Subject to, and without waiving the General and Specific objections
16 herein³, and based on discovery and TWC's investigation to date, TWC further responds as
17 follows: TWC has performed a good faith effort to supply documents that identify a price for TWC
18 products and services, and TWC will produce rate cards and rate change letters.
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22 **Why the Documents Should Be Produced:**

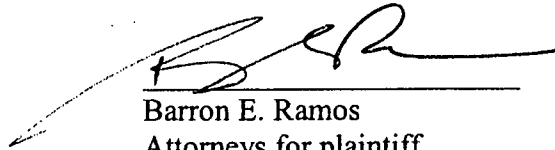
23 Time Warner has agreed to produce all responsive documents. When a Request is as clear
24

25 ³ Objections not raised in the Response itself are not cognizable, including "General and
26 Specific" objections referenced, but not specifically stated, in the Response. CCP section
27 2031.210(a) requires that the party respond "separately to each item" and section 2031.210(c)
28 provides that "[e]ach statement of compliance ... and each objection ... shall bear the same number
and be in the same sequence as the corresponding item or category in the demand ..."

1 as this, objections based upon purported "vagueness" are nothing more than "nuisance objections."
2 *Standon Co. Inc. v. Superior Court* (Kim) (1990) 225 Cal.App.3d 898, 903. Indeed, such
3 boilerplate objections are typically sanctionable. *Korea Data Systems Co., Ltd., v. Superior Court*
4 (*Aamazing Tech. Corp.*) (1997) 51 Cal.App.4th 1513, 1516.

5
6 Moreover, Time Warner has not refused to produce the documents because of the necessity
7 of the protective order. Rather, Time Warner has just refused to produce them, period.

8
9 Dated: December 7, 2007


Barron E. Ramos
Attorneys for plaintiff

DECLARATION OF BARRON E. RAMOS IN SUPPORT OF

MOTION TO COMPEL COMPLIANCE

I, Barron E. Ramos, declare as follows:

1. I am one of the attorneys for plaintiff Leon Alpert and have personal knowledge of each of the facts set forth herein, and if called upon as a witness could and would testify competently thereto.

2. This declaration is submitted in support of Mr. Alpert's Motion to Compel Compliance.

3. On September 17, 2007 I caused to be served on Time Warner plaintiff's first Request for Production of Documents. (See Exhibit "A")

4. On or about October 23, 2007, Time Warner responded to the demand and, in particular, those items at issue in this Motion, by agreeing to produce the documents. (See Exhibit "B").

5. Time Warner produced the so-called "retail" rates for areas outside of San Diego and the Desert Cities, but refused to produce the rates charged to HOA customers in those same areas. Plaintiff's counsel attempted to meet and confer on multiple occasions which resulted in multiple correspondence to and from Time Warner's counsel. (See Exhibit "C") Despite these efforts, Time Warner continued to refuse to produce HOA pricing for those areas outside of San Diego and the Desert Cities.

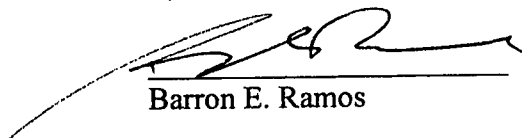
6. Throughout the meet and confer process, Time Warner made clear that it was not refusing to produce the requested documents because of the necessity of the protective order. Rather, Time Warner has just refused to produce the documents, period.

7. To prepare and revise these moving papers, I expended 12.7 hours of time. It is estimated that to review and research the opposition, prepare and file a reply, and then attend the hearing in this matter will require an additional 10 hours of time, minimum. My billing rate is \$ 425 per hour as I have been practicing law for 12 years. At \$ 425 per hour, the total billing for preparing this

1 motion, including the anticipated time necessary to file a reply and attend the hearing, is:

2 \$ 9,647.50. In addition, Mr. Alpert paid a filing fee of \$ 40 for total of \$ 9,687.50.

3 I declare under penalty of perjury under the laws of the State of California that the
4 foregoing is true and correct. Executed this 1st day of December, 2007 at Encinitas, California.

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6 Barron E. Ramos
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PROOF OF SERVICE

I am employed in the County of San Diego, California. I am over the age of 18 years and not a party to the within action. My business address is 132 N. El Camino Real, # 303, Encinitas, California 92024.

On December 7, 2007, I served the following documents:

**PLAINTIFF'S NOTICE OF MOTION AND MOTION TO COMPEL COMPLIANCE;
SEPARATE STATEMENT OF ITEMS IN DISPUTE; DECLARATION OF BARRON E.
RAMOS IN SUPPORT OF MOTION; and REQUEST FOR SANCTIONS IN THE SUM OF
\$ 9,687.50**

on the parties in this action by placing a true copy thereof in a sealed envelope, addressed as follows:

Jeffrey M. Shohet
Julie L. Hussey
Carrie S. Dolton
DLA PIPER US LLP
401 B Street, Suite 1700
San Diego, CA 92101-4297
Facsimile: (619) 764-6644

*Attorneys for Time Warner Entertainment-
Advance NewHouse Partnership, A New York
General Partnership, Through its San Diego
Division d.b.a. Time Warner Cable*

X (BY MAIL) I placed each such sealed envelope, with postage thereon fully prepaid for first-class mail, for collection and mailing at 132 N. El Camino Real, # 303, Encinitas, California 92024, following ordinary business practices. I am familiar with the practice of collection and processing of correspondence, said practice being that in the ordinary course of business, correspondence is deposited in the United States Postal service the same day as it is placed for collection.

(BY FACSIMILE) I transmitted the above-listed document to the party listed above via facsimile. The transmission was reported complete and without error. The telephone number of the facsimile machine I used was (760) 274-6438.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at Encinitas, California on December 7, 2007.

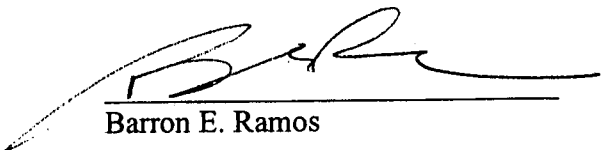

Barron E. Ramos

EXHIBIT A

1 BARRON E. RAMOS

Attorney at Law, A Professional Corporation

2 Barron E. Ramos (State Bar No. 179620)

132 N. El Camino Real, # 303

3 Encinitas, California 92024

Phone (858) 349-6019

4 Fax (760) 994-1354**5 CLARK & MARKHAM**

David R. Markham (State Bar No. 071814)

6 R. Craig Clark (State Bar No. 129219)

James M. Treglio (State Bar No. 228077)

7 401 West "A" Street, Suite 2200

San Diego, CA 92101

8 Telephone: (619) 239-1321

Facsimile: (619) 239-5888

9 Attorneys for plaintiff and the Class**10 SUPERIOR COURT OF THE STATE OF CALIFORNIA****11 COUNTY OF SAN DIEGO****12 LEON ALPERT, an individual,**
13 on behalf of himself, on behalf of all those
14 similarly situated, and on behalf of the general
public,**15 Plaintiffs,****16 v.****17 TIME WARNER CABLE, INC., a Delaware**
corporation, and DOES 1 TO 100,**18 Defendants.****) Case No. GIC 881621****) CLASS ACTION****) PLAINTIFF'S REQUEST FOR**
) PRODUCTION OF DOCUMENTS,
) SET NO. ONE (1)**) Dept: 63**
) Judge: Hon. Luis R. Vargas**) Trial Date: None Set**
) Case Filed: March 13, 2007**23 PROPOUNDING PARTY:****PLAINTIFF LEON ALPERT****26 RESPONDING PARTY:****TIME WARNER CABLE, INC.****27 NO:****ONE**

PLEASE TAKE NOTICE that on or before October 25, at 10:00 a.m. in the Law Offices of BARRON E. RAMOS, Attorney at Law, A Professional Corporation, 132 N. El Camino Real, # 303, Encinitas, California 92024, plaintiff Chadwick Bowen will require defendant TIME WARNER CABLE, INC., to produce for inspection and copying the following pursuant to California Code of Civil Procedure Section 2031.010 to wit:

Definitions:

A. The term "DOCUMENT" or "DOCUMENTS" shall include any "writing" as defined in California Evidence Code section 250, whether printed, recorded, filmed or reproduced by any other mechanical or electrical process, or written or produced by hand, and whether or not claimed to be privileged against discovery on any ground, and including all originals, masters, and non-identical copies.

B. The term "YOU" or "YOUR" shall refer to TIME WARNER CABLE, INC., all affiliated entities of TIME WARNER CABLE, INC., including its parent company, if any, and all subsidiaries of such parent, the employees, agents, officers, directors and representatives of all of these entities, and all other persons or entities acting on behalf or under the control of these entities.

C. The term RESIDENT shall refer to occupants of properties during the time period from March 13, 2003 to March 13, 2007 that were part of a homeowners' association (HOA) in California with whom YOU had entered into a "Residential Bulk Services Agreement" to provide basic cable services to the HOA members.

D. The term RETAIL CUSTOMER shall refer to California consumers to whom YOU provided products and services during the time period from March 13, 2003 to March 13, 2007, other than RESIDENTS.

REQUEST NUMBER ONE:

Please produce all DOCUMENTS which depict pricing for all of YOUR products and services, including any bundled service packages, to RESIDENTS.

REQUEST NUMBER TWO:

Please produce all DOCUMENTS which depict pricing for all of YOUR products and

1 services, including any bundled service packages, to RETAIL CUSTOMERS.

2 **REQUEST NUMBER THREE:**

3 Please produce all DOCUMENTS which depict all communications with plaintiff Leon
4 Alpert at any time, including, but not limited to, transcripts of telephone conversations,
5 correspondence to and from Mr. Alpert, e-mail communications to and from Mr. Alpert, and any
6 other form in which YOU maintain such communications (e.g., audio recordings).

7 **REQUEST NUMBER FOUR:**

8 Please produce a copy of any scripts used by YOUR employees when dealing with
9 RESIDENTS that call to complain about their bill.

10 **REQUEST NUMBER FIVE:**

11 Please produce a copy of any scripts used by YOUR employees when dealing with
12 RETAIL CUSTOMERS that call to complaint about their bill.

13 **REQUEST NUMBER SIX:**

14 Please produce a copy of all web pages YOU posted during the time period from March 13,
15 2003 to March 13, 2007 which depict pricing for all of YOUR products and services, including any
16 bundled service packages, to RESIDENTS.

17 **REQUEST NUMBER SEVEN:**

18 Please produce a copy of all web pages YOU posted during the time period from March 13,
19 2003 to March 13, 2007 which depict pricing for all of YOUR products and services, including any
20 bundled service packages, to RETAIL CUSTOMERS.

21 **REQUEST NUMBER EIGHT:**

22 Please produce a copy of all DOCUMENTS which explain why RESIDENTS and RETAIL
23 CUSTOMERS are charged differing rates for YOUR products and services.

24 **REQUEST NUMBER NINE:**

25 Please produce a copy of all DOCUMENTS which demonstrate how YOUR employees that
26 handle incoming customer calls determine whether the customer that is calling is a RESIDENT or
27 a RETAIL CUSTOMER.

EXHIBIT B

1 JEFFREY M. SHOHET (Bar No. 067529)
JULIE L. HUSSEY (Bar No. 237711)
2 CARRIE S. DOLTON (Bar No. 234298)
DLA PIPER US LLP
3 401 B Street, Suite 1700
San Diego, CA 92101-4297
4 Tel: 619.699.2700
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5

6 Attorneys for Defendant
TIME WARNER ENTERTAINMENT-ADVANCE/
7 NEWHOUSE PARTNERSHIP, A NEW YORK
GENERAL PARTNERSHIP, THROUGH ITS SAN
8 DIEGO DIVISION, DBA TIME WARNER CABLE

9
10 SUPERIOR COURT OF CALIFORNIA
11 COUNTY OF SAN DIEGO

12 LEON ALPERT, an individual, on behalf
13 of himself, on behalf of all those similarly
14 situated, and on behalf of the general
public,

15 Plaintiffs,

16 v.

17 TIME WARNER CABLE, INC., a
18 Delaware corporation, and DOES 1 TO
100,

19 Defendants.
20
21

CASE NO. GIC881621

**DEFENDANT TIME WARNER
ENTERTAINMENT-ADVANCE/
NEWHOUSE PARTNERSHIP, THROUGH
ITS SAN DIEGO DIVISION, DBA TIME
WARNER CABLE'S RESPONSES TO
PLAINTIFF'S REQUEST FOR
PRODUCTION OF DOCUMENTS, SET
NO. ONE (1)**

Dept: 63
Judge: Luis R. Vargas

Complaint: March 13, 2007
FAC: May 16, 2007

22
23 **PROPOUNDING PARTY: Plaintiff LEON ALPERT**
24 **RESPONDING PARTY: Defendant TIME WARNER CABLE**
25 **SET NO: ONE**

26 Pursuant to Code of Civil Procedure section 2031.010, *et seq.*, Defendant Time Warner
27 Entertainment-Advance/Newhouse Partnership, a New York general partnership, through its San
28 Diego Division, dba Time Warner Cable ("TWC"); sued erroneously as Time Warner Cable, Inc.,

-1-

1 responds to plaintiff Leon Alpert's ("Plaintiff") first set of request for production of documents
 2 ("Requests") as follows:

3 **PRELIMINARY STATEMENT AND GENERAL OBJECTIONS**

4 TWC has not completed investigation of this case, has not completed discovery, and has
 5 not completed preparation for trial. All of the responses contained herein are based only on such
 6 information that is presently available to and specifically known to TWC. It is anticipated that
 7 further discovery, independent investigation, legal research and analysis will supply additional
 8 facts, add additional meaning to the known facts, as well as establish entirely new factual
 9 conclusions and legal contentions, all of which may lead to substantial additions to, changes in,
 10 and variations from the responses herein set forth.

11 The following written responses are given without prejudice to TWC's right to produce
 12 evidence of any subsequently discovered fact or facts that TWC may later develop. The
 13 responses contained herein are made in a good faith effort to supply as much factual information
 14 as is presently known, but should in no way lead to the prejudice of TWC in relation to further
 15 discovery, research or analysis. TWC will produce responsive documents reflective of the time
 16 period identified in Plaintiff's Requests, including March 13, 2003 until March 13, 2007.

17 In providing responses to the demands, TWC does not in any manner waive or intend to
 18 waive, but rather intends to preserve and is preserving:

19 (1) All objections as to competency, relevancy, materiality and admissibility of the
 20 requested documents or the subject matter thereof;

21 (2) All rights to object to the use of any documents produced, or the subject matter
 22 thereof, in any subsequent proceedings; and

23 (3) All rights to object on any ground to any request for further responses to these or any
 24 other demands for documents or other discovery demands involving or related to the subject
 25 matter of the demands.

26 ////

27 ////

28 ////

1 **A. General Objections.**

2 TWC objects to the demands to the extent they seek discovery of matters that constitute or
3 reflect work product of attorneys, material prepared in anticipation of litigation, attorney-client
4 communications or are protected by privileges provided for under applicable state or federal law.

5 TWC also objects to this request to the extent that it seeks TWC's trade secret or
6 confidential and/or commercially sensitive business information without a protective order in
7 place.

8 TWC further objects to the location of the production and will produce documents in a
9 mutually agreeable manner, time and place.

10 TWC incorporates by reference each and every general objection set forth above into each
11 and every specific response. By responding that documents will be produced, TWC does not
12 represent that such documents exist; rather, only that a reasonable good faith search for such
13 documents will be made and, to the extent that such documents do exist, those documents will be
14 produced subject to the objections stated.

15 **B. Objections to Plaintiff's Defined Terms.**

16 TWC objects to Plaintiff's purported definition of the terms "YOU," and "YOUR" to the
17 extent that it renders each request including these terms to be vague and ambiguous, as well as
18 overly broad. The definition is so overbroad that it appears to call for information from literally
19 hundreds of different corporate entities and their privileged communications with their counsel.
20 TWC shall construe the terms "YOU," and "YOUR," when used in the Requests, to mean Time
21 Warner Entertainment-Advance/Newhouse Partnership, a New York general partnership, through
22 its San Diego Division, dba Time Warner Cable and no other person or entity.

23 TWC objects to Plaintiff's definition of the term "RESIDENT" to the extent that it renders
24 each request including this term to be vague and ambiguous, as well as overly broad.

25 TWC objects to Plaintiff's definition of the term "RETAIL CUSTOMER" to the extent
26 that it renders each request including this term to be vague and ambiguous, as well as overly
27 broad. Among other things, Plaintiff's definition is further flawed by the inclusion of the term
28 "consumers." TWC provides products and services to millions of individuals, residential

properties, and business entities across the United States. Plaintiff has only brought a claim purportedly on behalf of himself and on behalf of all California TWC subscribers: (1) who were members of HOAs and/or tenants of such members; (2) where the subscriber's HOA had contracted with TWC for basic cable services; and (3) where the subscriber purchased additional cable and cable related services directly from TWC but allegedly was not provided a credit for the basic cable services provided through the subscriber's HOA. Therefore, the inclusion of "consumers" in the definition renders each request which includes the defined term "RETAIL CUSTOMER" overbroad, beyond the scope of permissible discovery, unduly burdensome and harassing. TWC shall construe the term "RETAIL CUSTOMER" when used in the Requests, to mean TWC San Diego division subscribers of TWC products and services, other than bulk subscribers or business subscribers.

These preliminary objections are hereby incorporated into each and every objection to the Requests set forth below. Subject to the limitations and objections set forth above, TWC responds to the Requests as follows:

REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1:

Please produce all DOCUMENTS which depict pricing for all of YOUR products and services, including any bundled service packages, to RESIDENTS.

RESPONSE TO REQUEST FOR PRODUCTION NO. 1:

TWC objects to this Request as vague, ambiguous, overbroad, unduly burdensome and oppressive, and is not reasonably calculated to lead to the discovery of admissible information. The phrase "depict pricing" vaguely requests *every* document that refers to pricing. TWC objects to the extent that this request seeks confidential trade secret information regarding negotiated prices for bulk rate customers. Subject to, and without waiving the General and Specific Objections herein, and based on discovery and TWC's investigation to date, TWC further responds as follows: TWC has performed a good faith effort to supply documents that identify a price for TWC products and services, and TWC will produce rate cards and rate change letters.

////

REQUEST FOR PRODUCTION No. 2:

Please produce all DOCUMENTS which depict pricing for all of YOUR products and services, including any bundled service packages, to RETAIL CUSTOMERS.

RESPONSE TO REQUEST FOR PRODUCTION NO. 2:

TWC objects to this Request as vague, ambiguous, overbroad, unduly burdensome and oppressive, and is not reasonably calculated to lead to the discovery of admissible information. The phrase "depict pricing" vaguely requests *every* document that refer to pricing. TWC objects to the extent that this request seeks confidential trade secret information regarding negotiated prices for bulk rate customers. Subject to, and without waiving the General and Specific Objections herein, and based on discovery and TWC's investigation to date, TWC further responds as follows: TWC has performed a good faith effort to supply documents that identify a price for TWC products and services, and TWC will produce rate cards, rate estimates, rate letters and bill notification messages.

REQUEST FOR PRODUCTION NO. 3:

Please produce all DOCUMENTS which depict all communications with plaintiff Leon Alpert at any time, including, but not limited to, transcripts of telephone conversations, correspondence to and from Mr. Alpert, e-mail communications to and from Mr. Alpert, and any other form in which YOU maintain such communications (e.g., audio recordings).

RESPONSE TO REQUEST FOR PRODUCTION NO. 3:

Subject to, and without waiving the General and Specific Objections herein, and based on discovery and TWC's investigation to date, TWC further responds as follows: TWC will produce all non-privileged documents in its possession, custody or control which it can located and identify as responsive to this request.

REQUEST FOR PRODUCTION NO. 4:

Please produce a copy of any scripts used by YOUR employees when dealing with RESIDENTS that call to complain about their bill.

////

////

1 RESPONSE TO REQUEST FOR PRODUCTION NO. 4:

2 Subject to, and without waiving the General and Specific Objections herein, and based on
3 discovery and TWC's investigation to date, TWC further responds as follows: TWC has
4 performed a good faith effort to supply responsive documents to Plaintiff's requests for
5 production of documents and has not yet identified any documents in its possession, custody or
6 control which it can identify as being responsive to this request.

7 REQUEST FOR PRODUCTION NO. 5:

8 Please produce a copy of any scripts used by YOUR employees when dealing with
9 RETAIL CUSTOMERS that call to complaint about their bill.

10 RESPONSE TO REQUEST FOR PRODUCTION NO. 5:

11 Subject to, and without waiving the General and Specific Objections herein, and based on
12 discovery and TWC's investigation to date, TWC further responds as follows: TWC has
13 performed a good faith effort to supply responsive documents to Plaintiff's requests for
14 production of documents and has not yet identified any documents in its possession, custody or
15 control which it can identify as being responsive to this request.

16 REQUEST FOR PRODUCTION NO. 6:

17 Please produce a copy of all web pages YOU posted during the time period from
18 March 13, 2003 to March 13, 2007 which depict pricing for all of YOUR products and services,
19 including any bundled service packages, to RESIDENTS.

20 RESPONSE TO REQUEST FOR PRODUCTION NO. 6:

21 TWC objects to this request as overbroad, unduly burdensome, and not reasonably
22 calculated to lead to the discovery of admissible evidence. TWC does not archive its web pages
23 and overwrites them with updated web pages at the time of update. Subject to, and without
24 waiving the General and Specific Objections herein, and based on discovery and TWC's
25 investigation to date, TWC further responds as follows: TWC has performed a good faith effort
26 to supply responsive documents to Plaintiff's requests for production of documents and has not
27 yet identified any documents in its possession, custody or control which it can identify as being
28 responsive to this request.

1 REQUEST FOR PRODUCTION NO. 7:

2 Please produce a copy of all web pages YOU posted during the time period from
3 March 13, 2003 to March 13, 2007 which depict pricing for all of YOUR products and services,
4 including any bundled service packages, to RETAIL CUSTOMERS.

5 RESPONSE TO REQUEST FOR PRODUCTION NO. 7:

6 TWC objects to this request as overbroad, unduly burdensome , and not reasonably
7 calculated to lead to the discovery of admissible evidence. TWC does not archive its web pages
8 and overwrites them with updated web pages at the time of update. Subject to, and without
9 waiving the General and Specific Objections herein, and based on discovery and TWC's
10 investigation to date, TWC further responds as follows: TWC has performed a good faith effort
11 to supply responsive documents to Plaintiff's requests for production of documents and has not
12 yet identified any documents in its possession, custody or control which it can identify as being
13 responsive to this request.

14 REQUEST FOR PRODUCTION NO. 8:

15 Please produce a copy of all DOCUMENTS which explain why RESIDENTS and
16 RETAIL CUSTOMERS are charged differing rates for YOUR products and services.

17 RESPONSE TO REQUEST FOR PRODUCTION NO. 8:

18 TWC objects to this request as vague, ambiguous, seeking confidential trade secret
19 information and argumentative. TWC also objects to this request as overly burdensome to
20 produce each HOA agreement. Some RESIDENTS are also charged less than other RESIDENTS
21 and RETAIL CUSTOMERS for basic and additional cable services as specifically negotiated by
22 their HOAs. Subject to, and without waiving the General and Specific Objections herein, and
23 based on discovery and TWC's investigation to date, TWC further responds as follows: TWC
24 has performed a good faith effort to supply responsive documents to Plaintiff's requests for
25 production of documents and has not yet identified any documents in its possession, custody or
26 control which it can identify as being responsive to this request.

27 /////

28 /////

1 REQUEST FOR PRODUCTION NO. 9:

2 Please produce a copy of all DOCUMENTS which demonstrate how YOUR employees
3 that handle incoming customer calls determine whether the customer that is calling is a
4 RESIDENT or a RETAIL CUSTOMER.

5 RESPONSE TO REQUEST FOR PRODUCTION NO. 9:

6 TWC objects to this request as overbroad, unduly burdensome , seeking confidential
7 information, and not reasonably calculated to lead to the discovery of admissible evidence.
8 Subject to, and without waiving the General and Specific Objections herein, and based on
9 discovery and TWC's investigation to date, TWC further responds as follows: TWC will produce
10 all non-privileged documents in its possession, custody or control which it can identify as being
11 responsive to this request, including documents that indicate the screen viewed by TWC
12 employees that is used to determine whether the customer is a RESIDENT or a RETAIL
13 customer. Because of consumer confidentiality, only Plaintiff's record indicating such will be
14 produced.

15 REQUEST FOR PRODUCTION NO. 10:

16 Please produce a copy of all DOCUMENTS which demonstrate how YOUR employees
17 determine whether to charge a customer purchasing products or services as a RESIDENT
18 customer or a RETAIL CUSTOMER.

19 RESPONSE TO REQUEST FOR PRODUCTION NO. 10:

20 TWC objects to this request as overbroad, unduly burdensome, seeking confidential
21 information, and not reasonably calculated to lead to the discovery of admissible evidence.
22 Subject to, and without waiving the General and Specific Objections herein, and based on
23 discovery and TWC's investigation to date, TWC further responds as follows: TWC will produce
24 all non-privileged documents in its possession, custody or control which it can identify as being
25 responsive to this request, including documents that indicate the screen viewed by TWC
26 employees that is used to determine whether the customer is a RESIDENT or a RETAIL
27 customer. Because of consumer confidentiality, only Plaintiff's record indicating such will be
28 produced.

1 REQUEST FOR PRODUCTION NO. 11:

2 Please produce a copy of YOUR policies and procedures when dealing with RESIDENTS
3 that request a refund for being overcharged for products and services provided by YOU.

4 RESPONSE TO REQUEST FOR PRODUCTION NO. 11:

5 Subject to, and without waiving the General and Specific Objections herein, and based on
6 discovery and TWC's investigation to date, TWC further responds as follows: TWC will produce
7 all non-privileged documents in its possession, custody or control which it can identify as being
8 responsive to this request.

9 REQUEST FOR PRODUCTION NO. 12:

10 Please produce a copy of YOUR policies and procedures when dealing with RETAIL
11 CUSTOMERS that request a refund for being overcharged for products and services provided by
12 YOU.

13 RESPONSE TO REQUEST FOR PRODUCTION No. 12:

14 Subject to, and without waiving the General and Specific Objections herein, and based on
15 discovery and TWC's investigation to date, TWC further responds as follows: TWC will produce
16 all non-privileged documents in its possession, custody or control which it can identify as being
17 responsive to this request, at a mutually convenient date and time.

18 Dated: October 23, 2007

19 DLA PIPER US LLP

20
21 By 

22 JEFFREY M. SHOHE
23 JULIE L. HUSSEY
24 CARRIE S. DOLTON
25 Attorneys for Defendant
26 TIME WARNER ENTERTAINMENT-
27 ADVANCE/NEWHOUSE PARTNERSHIP, A
28 NEW YORK GENERAL PARTNERSHIP,
THROUGH ITS SAN DIEGO DIVISION,
DBA TIME WARNER CABLE

PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is DLA Piper US LLP, 401 B Street, Suite 1700, San Diego, California 92101. On October 23, 2007, I served the within document(s):

**TIME WARNER ENTERTAINMENT-ADVANCE/ NEWHOUSE PARTNERSHIP, A
NEW YORK GENERAL PARTNERSHIP, THROUGH ITS SAN DIEGO DIVISION,
DBA TIME WARNER CABLE'S NOTICE OF DEPOSITION OF PLAINTIFF LEON
ALPERT**

☐ by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.

☐ by placing a sealed envelope or package designated by UPS, with delivery fees paid or provided for, a true copy of each documents(s) above, in DLA Piper US LLP's mail room for collection, processing and delivery this same day to a deposit box or other facility regularly maintained by the express service carrier, or delivered to an authorized courier or driver authorized by the express service carrier to receive documents. I further declare that I am readily familiar with the business' practice for collection and processing of correspondence for delivery with express service carriers (i.e., FedEx, DHL, etc.); and that the correspondence shall be deposited with an express service carrier this same day in the ordinary course of business, to each addressee as set forth below.

☒ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Diego, California addressed as set forth below.

☐ by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.

Attorneys for Plaintiff

Barron E. Ramos, Esq.
132 N El Camino Real, Ste 303
Encinitas CA 92024
(858) 349-6019
(760) 994-1354 (fax)

David R. Markham, Esq.
Clark & Markham
401 West A St, Ste 2200
San Diego CA 92101
(619) 239-1321
(619) 239-5888 (fax)

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on October 23, 2007, at San Diego, California.


Eloy Rodriguez

-10-

EXHIBIT C

BARRON E. RAMOS

Attorney at Law, A Professional Corporation
132 N. El Camino Real, # 303
Encinitas, California 92024
Phone (760) 274-6438
Mobile (858) 349-6019
Fax (760) 994-1354

VIA FAX (619) 699-2701

November 5, 2007

Julie L. Hussey
DLA PIPER US LLP
401 B Street, Suite 1700
San Diego, CA 92101-4297

Re: *Alpert v. Time Warner*

Dear Julie:

Just a quick follow up and cc to my co-counsel re our conversation today. As I understand it, you will see if Time Warner (TW) is willing to provide documents reflecting pricing throughout Calif, not just in SD county and the "Desert Cities." At this point it is TW's position that the case is somehow limited to SD, and it is our position that it is statewide, as pleaded in the complaint. We look forward to your client's reply on this issue to determine if a motion is necessary. As I suggested, an alternative might be to have TW stipulate that what is true of SD is true of Calif, agree not oppose cert on that issue, and avoid production of the documents for other counties for the time being. Let us know.

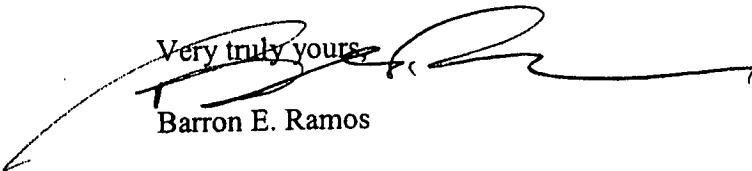
You were also going to put together some proposed language for a limited Protective Order since TW is concerned competitors might obtain sensitive information that may be reviewed by our consultant(s), if any. We look forward to seeing your proposed language in that regard.

Also, you were going to confirm that the remaining documents requested that TW indicated do not exist, in fact, do not exist.

Lastly, with regard to the CD not having the relevant conversation between TW and Mr. Alpert on it, you indicated that TW believes that specific recording was destroyed by someone not connected to this litigation.

We look forward to your reply on all and do appreciate your continuing courtesy and cooperation.

Very truly yours,


Barron E. Ramos

cc David R. Markham
CLARK & MARKHAM via fax 619-239-5888

BARRON E. RAMOS

Attorney at Law, A Professional Corporation
132 N. El Camino Real, # 303
Encinitas, California 92024
Phone (760) 274-6438
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Fax (760) 994-1354

VIA FAX (619) 699-2701

November 16, 2007

Julie L. Hussey
DLA PIPER US LLP
401 B Street, Suite 1700
San Diego, CA 92101-4297

Re: *Alpert v. Time Warner*

Dear Julie:

My date to start working on a motion to compel has arrived. As I said, I don't wait until the 11th hour. Since I am still awaiting several items from you and your client (e.g., a draft PO, the letter re which documents produced reflect actual pricing for HOA vs. non-HOA in SD, the additional rate cards for all of Calif, etc.), can we agree to extend my motion to compel time to no earlier than the end of December or some otherwise agreeable date? We have Thanksgiving and Christmas just around the corner, so figure everything starts to move in slow-motion for everyone concerned until year's end anyway.

Let me know as soon as possible.

Very truly yours,



Barron E. Ramos

cc David R. Markham
CLARK & MARKHAM via fax 619-239-5888
BER:sq

BARRON E. RAMOS
Attorney at Law, A Professional Corporation
132 N. El Camino Real, # 303
Encinitas, California 92024
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Fax (760) 994-1354

VIA FAX (619) 699-2701

November 21, 2007

Julie L. Hussey
DLA PIPER US LLP
401 B Street, Suite 1700
San Diego, CA 92101-4297

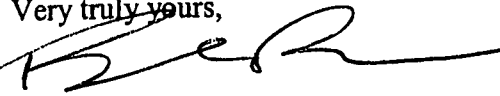
Re: *Alpert v. Time Warner*

Dear Julie:

Further to my previous letters and e-mails, I am still awaiting several items from you and your client (e.g., a draft PO, the letter re which documents produced reflect actual pricing for HOA vs. non-HOA in SD, the additional rate cards for all of Calif, etc.). I had asked back on November 16 if can we agree to extend my motion to compel time to no earlier than the end of December or some otherwise agreeable date, but I have not heard back.

If I hear nothing by Monday morning, November 26, after this weekend holiday, I will assume such an extension is not forthcoming and will have no choice but to file a Motion to Compel accordingly.

Very truly yours,



Barron E. Ramos

cc David R. Markham
CLARK & MARKHAM via fax 619-239-5888
BER:sq

BARRON E. RAMOS
Attorney at Law, A Professional Corporation
132 N. El Camino Real, # 303
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Phone (760) 274-6438
Mobile (858) 349-6019
Fax (760) 994-1354

VIA FAX (619) 699-2701

November 26, 2007

Julie L. Hussey
DLA PIPER US LLP
401 B Street, Suite 1700
San Diego, CA 92101-4297

Re: *Alpert v. Time Warner*

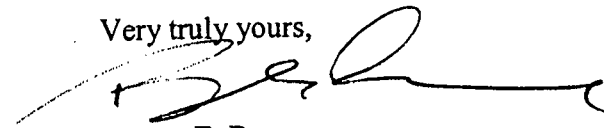
Dear Julie:

I was reviewing the new docs you produced and did not find any "rate cards" or other pricing for HOAs, except for in San Diego and the Desert Cities. All I see is what appears to the "retail pricing" for the other (non-San Diego) communities. Am I missing something? It appears the HOA pricing was not produced. Please advise.

Also, you were going to determine whether Time Warner (TW) utilized a back-up system of some kind so that it can finally produce Mr. Alpert's conversation with TW regarding the overcharge issue. As you may recall, that particular conversation somehow disappeared, though others were retained. If back-ups of data exist, which they must, then we can get a copy of that conversion, even if later deleted from the system. Please advise.

Lastly, in the spirit of cooperation, I presume Time Warner will agree that any motion to compel runs from the date of the latest production. If that is not the case, please advise so that I can calendar a motion accordingly.

Very truly yours,



Barron E. Ramos

cc David R. Markham
CLARK & MARKHAM via fax 619-239-5888
BER:sq



DLA Piper US LLP
401 B Street, Suite 1700
San Diego, California 92101-4297
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OUR FILE NO. 3255566-11

November 28, 2007
VIA FACSIMILE (760-994-1354)

Barron E. Ramos, Esq.
Attorney at Law
132 N El Camino Real Ste 303
Encinitas CA 92024

Re: Alpert v. Time Warner Cable

Dear Mr. Ramos:

Thank you for your November 26, 2008 letter.

There are no HOA pricing rate cards outside of the San Diego division. The only HOA specific pricing outside of the San Diego Division is the result of individually negotiated prices between a particular HOA and Time Warner.

There is no recording of the September 21, 2006 call.

Time Warner will not agree to a 30 day extension for Plaintiff to file a Motion to Compel. As previously explained, Time Warner will agree to limited extension of time as a professional courtesy should Plaintiff need additional time to file such motion once the meet and confer process has concluded.

Sincerely,

DLA Piper US LLP

A handwritten signature in black ink that reads 'Julie L. Hussey'.

Julie L. Hussey
Associate

JLH:epr
Enclosures

cc: David R. Markham, Esq. (via fax 619-239-5888)

SD\1775367.1
325566-11

Julie L. Hussey
DLA PIPER US LLP
401 B Street, Suite 1700
San Diego, CA 92101-4297

Re: *Alpert v. Time Warner*

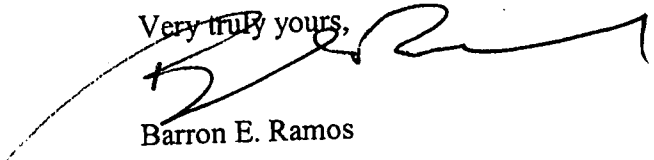
Dear Julie:

I write in reply to your letter of yesterday. I still don't have the HOA pricing for the rest of California, which is what is requested and is what I thought you were going to produce. If you are refusing to produce it, let me know so I can act accordingly.

With regard to the missing recording, you were going to determine whether Time Warner (TW) utilized a back-up system of some kind. Did they? If back-ups of data exist, then we can get a copy of that conversation, even if later deleted from the system. Again, please advise if back-ups are available. Your statement that "there is no recording" does not answer that question. If you can represent there are no back-ups, I will drop the issue. If you can't, then I'll act accordingly and assume that back-ups exist and that the recording, which is obtainable, is being concealed.

As for an extension on a motion to compel, what time frame will TW agree to? Let me know today so I can time my motion, if it becomes necessary. Frankly, I'm surprised TW won't agree to such a minimal professional courtesy which, from my experience, is always extended when parties are trying to sort out differences. Jamming me into a motion to compel tells me, and the Court, that TW has something to hide.

Very truly yours,



Barron E. Ramos

cc David R. Markham
CLARK & MARKHAM via fax 619-239-5888
BER:sq

BARRON E. RAMOS

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132 N. El Camino Real, # 303
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VIA FAX (619) 764-6644

December 3, 2007

Julie L. Hussey
DLA PIPER US LLP
401 B Street, Suite 1700
San Diego, CA 92101-4297

Re: *Alpert v. Time Warner*

Dear Julie:

I am working on the motion to compel this morning but am still hopeful we can avoid it, if possible. Kindly advise by the close of business today whether Time Warner (TW) will (i) agree to produce the rates TW charged to HOAs in the state of California, other than San Diego and the Desert Cities, (ii) whether TW will agree to produce a copy of the relevant recording of Mr. Alpert's call to TW that went missing (or, alternatively, TW can represent that there is definitively no back-up available from which to make a copy), and (iii) whether TW will agree to continue my motion cutoff date to work this out or is forcing me to bring the motion now. As I suggested some time ago, an alternative to production of all of the HOA pricing in California might be to have TW simply stipulate that what is true of San Diego is true of California in general, meaning that HOA pricing was lower than "retail" pricing during the class period, and agree not oppose cert on that issue. So far, I have received no reply to that suggestion.

As to the proposed protective order (PO), I am reviewing it, but you have not indicated that TW is withholding any documents pending execution of an agreeable PO. If TW is withholding documents pending entry of a PO, please advise what documents are being withheld and advise why TW will not continue the motion to compel until the language of the PO is, or cannot be, resolved.

Depending on the reply, or if I hear nothing, I will calendar and file the motion tomorrow morning. I hate bringing discovery motions as much as judges hate hearing them, so hopefully we can avoid burdening the Court with our discovery dispute.

Very truly yours,


Barron E. Ramos

cc David R. Markham
CLARK & MARKHAM via fax 619-239-5888

BER:sq

From: "Hussey, Julie" <Julie.Hussey@dlapiper.com>
Subject: RE: Time Warner
Date: Mon, December 3, 2007 2:36 pm
To: barron@yourclasscounsel.com
Cc: "Shohet, Jeffrey" <Jeffrey.Shohet@dlapiper.com>

Barron:

Thanks for today's letter and email, Barron.

Time Warner has produced a voluminous set of rate cards for the state of California (outside San Diego and Desert Cities) for 2007. We understand these to reflect all of the current retail rates in effect throughout the other Divisions of Time Warner. We are not aware of the existence of any HOA rate cards for California outside San Diego and Desert Cities. The rates charged to HOA customers outside San Diego and Desert Cities (but within California) are individually negotiated contract rates and are, therefore, not reflected in any "rate cards". Apart from what they may be called, Time Warner will not produce hundreds of individually negotiated, private contracts because rates negotiated with other bulk customers is a highly confidential trade secret the disclosure of which is not likely to lead to the discovery of admissible evidence. It would therefore be both unduly burdensome and irrelevant to require the production of these additional materials. We have produced all rate card we could locate for San Diego and Desert Cities for the requested time period, including the HOA rate cards. With this explanation, what is it that Plaintiff seeks to compel regarding pricing?

As a reminder of the discussion at Plaintiff's deposition, Time Warner will not agree to the stipulation referenced in your December 3, 2007 letter.

As discussed, there is no recording of the conversation that you continue to request. To be clear, there is no recording, backup or otherwise.

Finally, it is my understanding that Plaintiff's Motion to Compel is not due until December 12, 2007, and we frankly do not understand why an extension on such Motion to Compel is necessary. Plaintiff has had a copy of the Protective Order since November 21, 2001 and we have not yet received any comment or requested changes. Time Warner has not withheld documents pending execution of a protective order, but Plaintiff has withheld information on this basis. Please provide an executed protective order so such information can be exchanged or provide comment or suggested changes to the protective order so that we may meet and confer on this issue, if necessary. Certainly Plaintiff can file the motion tomorrow if he chooses, but since Plaintiff's motion deadline is not until December 12, 2007 and the only outstanding issue is a protective order (which is in your court) it would be unfortunate to waste the Court's time with such a motion. However, should Plaintiff need an extension of time in which to file the motion to compel, as a professional courtesy, Time Warner will agree to extend the deadline until December 19, 2007.

Please let me know if you would like to discuss any of these issues.

Regards,

Julie

-----Original Message-----

From: barron@yourclasscounsel.com [mailto:barron@yourclasscounsel.com]
Sent: Monday, December 03, 2007 9:12 AM
To: Hussey, Julie

BARRON E. RAMOS
Attorney at Law, A Professional Corporation
132 N. El Camino Real, # 303
Encinitas, California 92024
Phone (760) 274-6438
Mobile (858) 349-6019
Fax (760) 994-1354

VIA FAX (619) 764-6644

December 3, 2007

Julie L. Hussey
DLA PIPER US LLP
401 B Street, Suite 1700
San Diego, CA 92101-4297

Re: *Alpert v. Time Warner*

Dear Julie:

I just read over your e-mail in reply to my letter of earlier today. Thanks for the prompt reply today.

You ask what it is we would be seeking to compel. The answer was, and is, the HOA pricing for the rest of California. Having only the "retail" pricing is only having half of the picture and is meaningless without the other half - i.e., the HOA pricing. We need the full pricing (HOA and retail) for all of California and I understand your position that Time Warner is refusing to provide it. Since Time Warner will not stip that HOA and retail pricing differ throughout the state the way it does in San Diego (i.e., HOA is lower), and since it will not produce the actual pricing, then we have no choice but to move to compel. If you have another suggestion, I may be open to it, but frankly I don't see it. We need to move to certify a statewide class and therefore need statewide discovery.

In your letter you also state that Time Warner is not withholding anything based upon the need for a protective order, which I appreciate. It is for that reason there is no hurry to enter into such an agreement. As you say, Time Warner is not withholding the HOA pricing in other areas until we enter into a potential protective order. Rather, they are withholding it because they claim it would be unduly burdensome and the requested production would be, according to Time Warner, "irrelevant."

Finally, I thank you for the one week extension in filing the motion, but if Time Warner is simply going to refuse to produce the requested documents, I will be filing before December 12 in any event. If something changes or you want to discuss this further, let me know.

Very truly yours,


Barron E. Ramos

cc David R. Markham
CLARK & MARKHAM via fax 619-239-5888
BER:sq

COPY

CM-110

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Jeffrey M. Shohet (Bar No. 067529)/Julie L. Hussey (Bar No. 237711) Carrie S. Dolton (Bar No. 234298) DLA Piper US LLP 401 B Street, Suite 1700 San Diego, CA 92101-4297 TELEPHONE NO.: 619 699-2700 FAX NO. (Optional): 619 699-2701 E-MAIL ADDRESS (Optional): Time Warner Entertainment-Advance/Newhouse Partn. ATTORNEY FOR (Name): through its San Diego division dba Time Warner Cable		FOR COURT USE ONLY FILED DEC 27 2007 By: _____, Deputy
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO STREET ADDRESS: 330 West Broadway MAILING ADDRESS: CITY AND ZIP CODE: San Diego, CA 92101 BRANCH NAME:		
PLAINTIFF/PETITIONER: LEON ALPERT DEFENDANT/RESPONDENT: TIME WARNER CABLE, INC.		
CASE MANAGEMENT STATEMENT (Check one): <input checked="" type="checkbox"/> UNLIMITED CASE (Amount demanded exceeds \$25,000) <input type="checkbox"/> LIMITED CASE (Amount demanded is \$25,000 or less)		
CASE NUMBER: GIC 881621		
A CASE MANAGEMENT CONFERENCE is scheduled as follows: Date: January 11, 2008 Time: 10:00 a.m. Dept.: C-63 Div.: Room: Address of court (if different from the address above):		

INSTRUCTIONS: All applicable boxes must be checked, and the specified information must be provided.

- Party or parties (answer one):
 - ☒ This statement is submitted by party (name): Time Warner Entertainment-Advance/Newhouse Partnership,
 - ☐ This statement is submitted jointly by parties (names): through its San Diego division, dba Time Warner Cable, sued erroneously as Time Warner Cable, Inc.
- Complaint and cross-complaint (to be answered by plaintiffs and cross-complainants only)
 - The complaint was filed on (date):
 - ☐ The cross-complaint, if any, was filed on (date):
- Service (to be answered by plaintiffs and cross-complainants only)
 - ☐ All parties named in the complaint and cross-complaint have been served, or have appeared, or have been dismissed.
 - ☐ The following parties named in the complaint or cross-complaint
 - ☐ have not been served (specify names and explain why not):
 - ☐ have been served but have not appeared and have not been dismissed (specify names):
 - ☐ have had a default entered against them (specify names):
 - ☐ The following additional parties may be added (specify names, nature of involvement in case, and the date by which they may be served):
- Description of case
 - Type of case in ☒ complaint ☐ cross-complaint (describe, including causes of action):
 California Business & Professions Code section 17200 cause of action for unlawful, unfair, and/or deceptive business practices.

Page 1 of 4

CASE MANAGEMENT STATEMENT

CM-110

PLAINTIFF/PETITIONER: LEON ALPERT	CASE NUMBER: GIC 881621
DEFENDANT/RESPONDENT: TIME WARNER CABLE, INC.	

4. b. Provide a brief statement of the case, including any damages. (If personal injury damages are sought, specify the injury and damages claimed, including medical expenses to date [indicate source and amount], estimated future medical expenses, lost earnings to date, and estimated future lost earnings. If equitable relief is sought, describe the nature of the relief.) Plaintiff, individually and on behalf of a purported class, claims that Defendant Time Warner Cable violated Business & Professions Code section 17200 by unlawfully, unfairly, and/or deceptively 1) overcharging customers who are members of homeowners' associations for cable and cable related services by not providing such customers pricing that properly accounts for the cable services already provided under Time Warner Cable's contract with the customer's homeowners' association; 2) attempting to limit customers' rights to seek refunds for overcharges to 30 days after receipt of a bill. Plaintiff also claims that Time Warner Cable violated Business & Professions Code section 17200 by violating Civil Code sections 1770(a)(3), (13), and (19). Plaintiff demands restitution for alleged overcharges and an injunction prohibiting Time Warner Cable from engaging in such alleged unlawful, unfair, and deceptive business practices.

☐ (If more space is needed, check this box and attach a page designated as Attachment 4b.)

5. Jury or nonjury trial

The party or parties request ☐ a jury trial ☒ a nonjury trial (if more than one party, provide the name of each party requesting a jury trial):

6. Trial date

- a. ☐ The trial has been set for (date):
b. ☒ No trial date has been set. This case will be ready for trial within 12 months of the date of the filing of the complaint (if not, explain): Although Plaintiff has designated the case as complex, Defendant believes, at this time, that the case will be ready for trial within 12 months of the date of the filing of the complaint.
c. Dates on which parties or attorneys will not be available for trial (specify dates and explain reasons for unavailability):

7. Estimated length of trial

The party or parties estimate that the trial will take (check one):

- a. ☒ days (specify number): 3 (if class is not certified)
b. ☐ hours (short causes) (specify):

8. Trial representation (to be answered for each party)

The party or parties will be represented at trial ☒ by the attorney or party listed in the caption ☐ by the following:

- a. Attorney:
b. Firm:
c. Address:
d. Telephone number:
e. Fax number:
f. E-mail address:
g. Party represented:

☐ Additional representation is described in Attachment 8.

9. Preference

☐ This case is entitled to preference (specify code section):

10. Alternative Dispute Resolution (ADR)

- a. Counsel ☐ has ☒ has not provided the ADR information package identified in rule 3.221 to the client and has reviewed ADR options with the client.
b. ☐ All parties have agreed to a form of ADR. ADR will be completed by (date):
c. ☐ The case has gone to an ADR process (indicate status):

CM-110

PLAINTIFF/PETITIONER: LEON ALPERT	CASE NUMBER: GIC 881621
DEFENDANT/RESPONDENT: TIME WARNER CABLE, INC.	

10. d. The party or parties are willing to participate in (check all that apply):

- (1) ☒ Mediation
(2) ☐ Nonbinding judicial arbitration under Code of Civil Procedure section 1141.12 (discovery to close 15 days before arbitration under Cal. Rules of Court, rule 3.822)
(3) ☐ Nonbinding judicial arbitration under Code of Civil Procedure section 1141.12 (discovery to remain open until 30 days before trial; order required under Cal. Rules of Court, rule 3.822)
(4) ☐ Binding judicial arbitration
(5) ☐ Binding private arbitration
(6) ☐ Neutral case evaluation
(7) ☐ Other (specify):

- e. ☐ This matter is subject to mandatory judicial arbitration because the amount in controversy does not exceed the statutory limit.
f. ☐ Plaintiff elects to refer this case to judicial arbitration and agrees to limit recovery to the amount specified in Code of Civil Procedure section 1141.11.
g. ☐ This case is exempt from judicial arbitration under rule 3.811 of the California Rules of Court (specify exemption):

11. Settlement conference

- ☒ The party or parties are willing to participate in an early settlement conference (specify when):
After initial exchange of discovery.

12. Insurance

- a. ☒ Insurance carrier, if any, for party filing this statement (name): ACE American Insurance Company
b. Reservation of rights: ☒ Yes ☐ No
c. ☐ Coverage issues will significantly affect resolution of this case (explain):

13. Jurisdiction

Indicate any matters that may affect the court's jurisdiction or processing of this case, and describe the status.

- ☐ Bankruptcy ☐ Other (specify):

Status:

14. Related cases, consolidation, and coordination

- a. ☐ There are companion, underlying, or related cases.
(1) Name of case:
(2) Name of court:
(3) Case number:
(4) Status:
☐ Additional cases are described in Attachment 14a
b. ☐ A motion to ☐ consolidate ☐ coordinate will be filed by (name party):

15. Bifurcation

- ☐ The party or parties intend to file a motion for an order bifurcating, severing, or coordinating the following issues or causes of action (specify moving party, type of motion, and reasons):

16. Other motions

- ☒ The party or parties expect to file the following motions before trial (specify moving party, type of motion, and issues):
Defendant will file a motion for summary judgment prior to the Case Management Conference prior to January 11, 2008.

CM-110

PLAINTIFF/PETITIONER: LEON ALPERT	CASE NUMBER: GIC 881621
DEFENDANT/RESPONDENT: TIME WARNER CABLE, INC.	

17. Discovery

- a. ☐ The party or parties have completed all discovery.
- b. ☒ The following discovery will be completed by the date specified (*describe all anticipated discovery*):

<u>Party</u>	<u>Description</u>	<u>Date</u>
Defendant is exploring opportunities to resolve the case without a trial. In the event the case proceeds, the following is the discovery Defendant proposes:		
Selected Class Members	Document Discovery	January 2008
Third Party	Depositions	March 2008
Completion of Plaintiff's Deposition	Deposition	March 2008

- c. ☐ The following discovery issues are anticipated (*specify*):

18. Economic Litigation

- a. ☐ This is a limited civil case (i.e., the amount demanded is \$25,000 or less) and the economic litigation procedures in Code of Civil Procedure sections 90 through 98 will apply to this case.
- b. ☐ This is a limited civil case and a motion to withdraw the case from the economic litigation procedures or for additional discovery will be filed (*if checked, explain specifically why economic litigation procedures relating to discovery or trial should not apply to this case*):

19. Other Issues

- ☐ The party or parties request that the following additional matters be considered or determined at the case management conference (*specify*):

20. Meet and confer

- a. ☒ The party or parties have met and conferred with all parties on all subjects required by rule 3.724 of the California Rules of Court (*if not, explain*):
- b. After meeting and conferring as required by rule 3.724 of the California Rules of Court, the parties agree on the following (*specify*):

21. Case management orders

Previous case management orders in this case are (*check one*): ☒ none ☐ attached as Attachment 21.

22. Total number of pages attached (*if any*): _____

I am completely familiar with this case and will be fully prepared to discuss the status of discovery and ADR, as well as other issues raised by this statement, and will possess the authority to enter into stipulations on these issues at the time of the case management conference, including the written authority of the party where required.

Date: December 27, 2007

JULIE L. HUSSEY

(TYPE OR PRINT NAME)

▶  (SIGNATURE OF PARTY OR ATTORNEY)

▶ _____ (SIGNATURE OF PARTY OR ATTORNEY)

☐ Additional signatures are attached

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): JULIE L. HUSSEY 237711 DLA PIPER US LLP 401 B ST, STE 1700 SAN DIEGO, CA 92101-4297 TELEPHONE NO.: 619-699-2700 E-MAIL ADDRESS (Optional): julie.hussey@dlapiper.com FAX NO. (Optional): 619-699-2701 ATTORNEY FOR (Name): TIME WARNER CABLE		FOR COURT USE ONLY FILED DEC 27 2007 By: _____, Deputy
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO <input type="checkbox"/> COUNTY COURTHOUSE, 220 W. BROADWAY, SAN DIEGO, CA 92101-3814 <input checked="" type="checkbox"/> HALL OF JUSTICE, 330 W. BROADWAY, SAN DIEGO, CA 92101-3827 <input type="checkbox"/> FAMILY COURT, 1555 6TH AVE., SAN DIEGO, CA 92101-3294 <input type="checkbox"/> MADGE BRADLEY BLDG., 1409 4TH AVE., SAN DIEGO, CA 92101-3105 <input type="checkbox"/> KEARNY MESA BRANCH, 8850 CLAIREMONT MESA BLVD., SAN DIEGO, CA 92123-1187 <input type="checkbox"/> JUVENILE COURT, 2851 MEADOW LARK DR., SAN DIEGO, CA 92123-2792 <input type="checkbox"/> NORTH COUNTY DIVISION, 325 S. MELROSE DR., VISTA, CA 92081-8643 <input type="checkbox"/> EAST COUNTY DIVISION, 250 E. MAIN ST., EL CAJON, CA 92020-3941 <input type="checkbox"/> RAMONA BRANCH, 1428 MONTECITO RD., RAMONA, CA 92065-5200 <input type="checkbox"/> SOUTH COUNTY DIVISION, 500 3RD AVE., CHULA VISTA, CA 91910-5649		
PETITIONER/PLAINTIFF: LEON ALPERT RESPONDENT/DEFENDANT: TIME WARNER ENTERTAINMENT-ADVANCE/ NEWHOUSE PARTNERSHIP, A NEW YORK GENERAL PARTNERSHIP, THROUGH ITS SAN DIEGO DIVISION, DBA TIME WARNER CABLE		
PROOF OF SERVICE BY FIRST-CLASS MAIL—CIVIL		CASE NUMBER: GIC881621

(Do not use this Proof of Service to show service of a Summons and Complaint.)

- I am over 18 years of age and not a party to this action. I am a resident of or employed in the county where the mailing took place.
- My residence or business address is :DLA PIPER US LLP, 401 B ST, STE 1700, SAN DIEGO, CA 92101-4297
- On (date):12/27/07 I mailed from (city and state): SAN DIEGO, CA the following documents (specify): CASE MANAGEMENT STATEMENT

☐ The documents are listed in the Attachment to Proof of Service by First-Class Mail—Civil (Documents Served) (form POS-030(D)).
- I served the documents by enclosing them in an envelope and (check one):
 - ☐ depositing the sealed envelope with the United States Postal Service with the postage fully prepaid.
 - ☒ placing the envelope for collection and mailing following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.
- The envelope was addressed and mailed as follows:
 - Name of person served: Barron E. Ramos, Esq. and David R. Markham, Esq.
 - Address of person served: 132 N. El Camino Real, Ste. 303, Encinitas, CA 92024; and Clark & Markham, 401 W. A St., Ste. 2200, San Diego, CA 92101, respectively.

☐ The name and address of each person to whom I mailed the documents is listed in the Attachment to Proof of Service by First-Class Mail—Civil (Persons Served) (POS-030(P)).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: December 27, 2007

Eloy Rodriguez

(TYPE OR PRINT NAME OF PERSON COMPLETING THIS FORM)

(SIGNATURE OF PERSON COMPLETING THIS FORM)

CM-110

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Barron E. Ramos, Attorney at Law, APC (179620) 132 N. El Camino Real, # 303 Encinitas, CA 92024		FOR COURT USE ONLY	
TELEPHONE NO.: 760-274-6438 FAX NO. (Optional): 760-994-1354 E-MAIL ADDRESS (Optional):			
ATTORNEY FOR (Name): plaintiff Leon Alpert			
SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Diego STREET ADDRESS: 330 W. Broadway MAILING ADDRESS: CITY AND ZIP CODE: San Diego, CA 92101 BRANCH NAME: Hall of Justice			
PLAINTIFF/PETITIONER: Leon Alpert DEFENDANT/RESPONDENT: Time Warner			
CASE MANAGEMENT STATEMENT (Check one): <input checked="" type="checkbox"/> UNLIMITED CASE (Amount demanded exceeds \$25,000) <input type="checkbox"/> LIMITED CASE (Amount demanded is \$25,000 or less)		CASE NUMBER: GIC 881621	
A CASE MANAGEMENT CONFERENCE is scheduled as follows: Date: Jan 11, 2008 Time: 10:00 a.m. Dept.: C-63 Div.: Room: Address of court (if different from the address above):			

1. **Party or parties (answer one):**
a. ☒ This statement is submitted by party (name): **plaintiff Leon Alpert**
b. ☐ This statement is submitted jointly by parties (names):
2. **Complaint and cross-complaint (to be answered by plaintiffs and cross-complainants only)**
a. The complaint was filed on (date): **March 13, 2007**
b. ☐ The cross-complaint, if any, was filed on (date):
3. **Service (to be answered by plaintiffs and cross-complainants only)**
a. ☒ All parties named in the complaint and cross-complaint have been served, or have appeared, or have been dismissed.
b. ☐ The following parties named in the complaint or cross-complaint
(1) ☐ have not been served (specify names and explain why not):
(2) ☐ have been served but have not appeared and have not been dismissed (specify names):
(3) ☐ have had a default entered against them (specify names):
c. ☐ The following additional parties may be added (specify names, nature of involvement in case, and the date by which they may be served):
4. **Description of case**
a. Type of case in ☒ complaint ☐ cross-complaint (describe, including causes of action):
Unlawful, unfair and deceptive overcharging for cable television and related services in violation of Cal. B&P Code section 17200.

CM-110

PLAINTIFF/PETITIONER: Leon Alpert	CASE NUMBER:
DEFENDANT/RESPONDENT: Time Warner	GIC 881621

4. b. Provide a brief statement of the case, including any damages. (If personal injury damages are sought, specify the injury and damages claimed, including medical expenses to date [indicate source and amount], estimated future medical expenses, lost earnings to date, and estimated future lost earnings. If equitable relief is sought, describe the nature of the relief.)

Plaintiff, on behalf of himself and all others situated, brings this action to remedy Time Warner's systematic overcharging of its HOA customers in the State of California in that Time Warner does not account for the monies already paid by HOA members to Time Warner through the HOA members' HOA associations that have existing contracts with Time Warner when pricing services to those HOA customers. Plaintiff seeks class-wide restitution of all overcharges and injunctive relief.

☐ (If more space is needed, check this box and attach a page designated as Attachment 4b.)

5. Jury or nonjury trial

The party or parties request ☒ a jury trial ☐ a nonjury trial (If more than one party, provide the name of each party requesting a jury trial):

6. Trial date

a. ☐ The trial has been set for (date):

b. ☒ No trial date has been set. This case will be ready for trial within 12 months of the date of the filing of the complaint (if not, explain):

The case may not be ready within 12 months due to discovery disputes and case complexity.

c. Dates on which parties or attorneys will not be available for trial (specify dates and explain reasons for unavailability):

7. Estimated length of trial

The party or parties estimate that the trial will take (check one):

a. ☒ days (specify number): 5

b. ☐ hours (short causes) (specify):

8. Trial representation (to be answered for each party)

The party or parties will be represented at trial ☒ by the attorney or party listed in the caption ☐ by the following:

a. Attorney:

b. Firm:

c. Address:

d. Telephone number:

e. Fax number:

f. E-mail address:

g. Party represented:

☐ Additional representation is described in Attachment 8.

9. Preference

☐ This case is entitled to preference (specify code section):

10. Alternative Dispute Resolution (ADR)

a. Counsel ☒ has ☐ has not provided the ADR information package identified in rule 3.221 to the client and has reviewed ADR options with the client.

b. ☐ All parties have agreed to a form of ADR. ADR will be completed by (date):

c. ☐ The case has gone to an ADR process (indicate status):

CM-110

PLAINTIFF/PETITIONER: Leon Alpert	CASE NUMBER:
DEFENDANT/RESPONDENT: Time Warner	GIC 881621

10. d. The party or parties are willing to participate in (check all that apply):

- (1) ☒ Mediation
(2) ☐ Nonbinding judicial arbitration under Code of Civil Procedure section 1141.12 (discovery to close 15 days before arbitration under Cal. Rules of Court, rule 3.822)
(3) ☐ Nonbinding judicial arbitration under Code of Civil Procedure section 1141.12 (discovery to remain open until 30 days before trial; order required under Cal. Rules of Court, rule 3.822)
(4) ☐ Binding judicial arbitration
(5) ☐ Binding private arbitration
(6) ☐ Neutral case evaluation
(7) ☐ Other (specify):

e. ☐ This matter is subject to mandatory judicial arbitration because the amount in controversy does not exceed the statutory limit.f. ☐ Plaintiff elects to refer this case to judicial arbitration and agrees to limit recovery to the amount specified in Code of Civil Procedure section 1141.11.g. ☐ This case is exempt from judicial arbitration under rule 3.811 of the California Rules of Court (specify exemption):

11. Settlement conference

- ☒ The party or parties are willing to participate in an early settlement conference (specify when):
After exchange of discovery sufficient to fully evaluate case.

12. Insurance

- a. ☐ Insurance carrier, if any, for party filing this statement (name):
b. Reservation of rights: ☐ Yes ☐ No
c. ☐ Coverage issues will significantly affect resolution of this case (explain):

13. Jurisdiction

Indicate any matters that may affect the court's jurisdiction or processing of this case, and describe the status.

- ☐ Bankruptcy ☐ Other (specify):

Status:

14. Related cases, consolidation, and coordination

- a. ☐ There are companion, underlying, or related cases.
(1) Name of case:
(2) Name of court:
(3) Case number:
(4) Status:
☐ Additional cases are described in Attachment 14a.
b. ☐ A motion to ☐ consolidate ☐ coordinate will be filed by (name party):

15. Bifurcation

- ☐ The party or parties intend to file a motion for an order bifurcating, severing, or coordinating the following issues or causes of action (specify moving party, type of motion, and reasons):

16. Other motions

- ☒ The party or parties expect to file the following motions before trial (specify moving party, type of motion, and issues):
Class certification

CM-110

PLAINTIFF/PETITIONER: Leon Alpert	CASE NUMBER:
DEFENDANT/RESPONDENT: Time Warner	GIC 881621

17. Discovery

- a. ☐ The party or parties have completed all discovery.
- b. ☒ The following discovery will be completed by the date specified (*describe all anticipated discovery*):

Party	Description	Date
Plaintiff	written discovery and depositions (cert)	June 08
Plaintiff	written discovery and depositions (merits)	Nov 08

- c. ☒ The following discovery issues are anticipated (*specify*):
- Motion to compel document production pending

18. Economic Litigation

- a. ☐ This is a limited civil case (i.e., the amount demanded is \$25,000 or less) and the economic litigation procedures in Code of Civil Procedure sections 90 through 98 will apply to this case.
- b. ☐ This is a limited civil case and a motion to withdraw the case from the economic litigation procedures or for additional discovery will be filed (*if checked, explain specifically why economic litigation procedures relating to discovery or trial should not apply to this case*):

19. Other issues

- ☒ The party or parties request that the following additional matters be considered or determined at the case management conference (*specify*):

An order shortening time to have plaintiff's motion to compel heard. The motion is currently scheduled for March 14, 2008.

20. Meet and confer

- a. ☒ The party or parties have met and conferred with all parties on all subjects required by rule 3.724 of the California Rules of Court (*if not, explain*):

- b. After meeting and conferring as required by rule 3.724 of the California Rules of Court, the parties agree on the following (*specify*):

21. Case management orders

Previous case management orders in this case are (*check one*): ☒ none ☐ attached as Attachment 21.

22. Total number of pages attached (*if any*): _____

I am completely familiar with this case and will be fully prepared to discuss the status of discovery and ADR, as well as other issues raised by this statement, and will possess the authority to enter into stipulations on these issues at the time of the case management conference, including the written authority of the party where required.

Date: Jan 03, 2008

Barron E. Ramos

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY)

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY)

☐ Additional signatures are attached

PROOF OF SERVICE

I am employed in the County of San Diego, California. I am over the age of 18 years and not a party to the within action. My business address is 132 N. El Camino Real, # 303, Encinitas, California 92024.

On January 3, 2008, I served the following documents:

PLAINTIFF'S CASE MANAGMENT STATEMENT

on the parties in this action by placing a true copy thereof in a sealed envelope, addressed as follows:

Jeffrey M. Shohet
Julie L. Hussey
Carrie S. Dolton
DLA PIPER US LLP
401 B Street, Suite 1700
San Diego, CA 92101-4297
Facsimile: (619) 764-6644

*Attorneys for Time Warner Entertainment-
Advance NewHouse Partnership, A New York
General Partnership, Through its San Diego
Division d.b.a. Time Warner Cable*

X (BY MAIL) I placed each such sealed envelope, with postage thereon fully prepaid for first-class mail, for collection and mailing at 132 N. El Camino Real, # 303, Encinitas, California 92024, following ordinary business practices. I am familiar with the practice of collection and processing of correspondence, said practice being that in the ordinary course of business, correspondence is deposited in the United States Postal service the same day as it is placed for collection.

(BY FACSIMILE) I transmitted the above-listed document to the party listed above via facsimile. The transmission was reported complete and without error. The telephone number of the facsimile machine I used was (760) 274-6438.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at Encinitas, California on January 3, 2008.


Barron E. Ramos

BARRON E. RAMOS
Attorney at Law, A Professional Corporation
Barron E. Ramos (State Bar No. 179620)
132 N. El Camino Real, # 303
Encinitas, California 92024
Telephone: (760) 274-6438
Facsimile: (760) 994-1354

CLARK & MARKHAM
David R. Markham (State Bar No. 071814)
R. Craig Clark (State Bar No. 129219)
James M. Treglio (State Bar No. 228077)
401 West "A" Street, Suite 2200
San Diego, CA 92101
Telephone: (619) 239-1321
Facsimile: (619) 239-5888

Attorneys for plaintiff and the Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

LEON ALPERT, an individual,
on behalf of himself, on behalf of all those
similarly situated, and on behalf of the general
public,

Plaintiffs,

v.

TIME WARNER CABLE, INC., a Delaware
corporation, and DOES 1 TO 100,

Defendants.

) Case No. GIC 881621

CLASS ACTION

**UNOPPOSED EX-PARTE APPLICATION
FOR AN ORDER SHORTENING TIME ON
PLAINTIFF'S MOTION TO COMPEL;
DECLARATION OF BARRON E. RAMOS
IN SUPPORT THEREOF; POINTS AND
AUTHORITIES; PROPOSED ORDER**

) Date: January 11, 2008
) Time: 10:00 a.m.

) Dept: 63
) Judge: Hon. Luis R. Vargas

) Trial Date: None Set
) Case Filed: March 13, 2007

APPLICATION AND DECLARATION OF BARRON E. RAMOS

I, Barron E. Ramos, declare as follows:

1. I am one of the attorneys for plaintiff Leon Alpert and have personal knowledge of each of the facts set forth herein, and if called upon as a witness could and would testify competently thereto.

2. On December 7, 2007, I filed and served plaintiff's motion to compel compliance (and alternative motion to compel). The first available hearing date for the motion was March 14, 2008 due to the Court's congested calendar. The Court's calendar clerk advised me that if we wanted an earlier hearing date we would need to apply ex-parte for an Order shortening time and advised that for the convenience of the Court it would be best to have the ex-parte request heard at the time of the January 11, 2008 CMC in this matter.

3. The delay in hearing plaintiff's motion to compel would cause substantial prejudice to plaintiff in that Time Warner has indicated it will be filing a Motion for Summary Judgment/Adjudication (which will likely have already been filed at the time of this ex-parte application), yet it is withholding relevant and critical discovery. Thus, plaintiff is not in a position to fully evaluate the merits of the defenses raised, has inadequate discovery to oppose any dispositive motion, nor is able to meaningfully depose any of Time Warner's PMKs until those documents are produced and analyzed.

4. On January 4, 2008, after I contacted Time Warner's counsel, Time Warner agreed it would not oppose moving the hearing date up to mid-February to permit plaintiff sufficient time for discovery. On January 7, 2008 I provided Time Warner's counsel notice of the fact that this ex-parte hearing would occur at the time of the currently scheduled CMC, January 11, 2008 at 10:00 a.m.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 7th day of January, 2008 at Encinitas, California.


Barron E. Ramos

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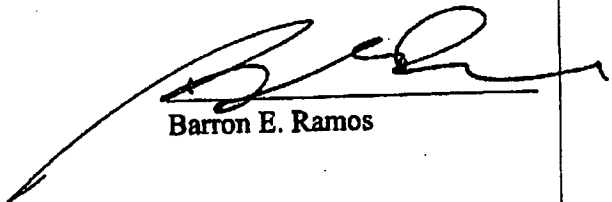
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1 represent. For these reasons, and given what plaintiff believes is the relative simplicity of the
2 pending motion to compel, plaintiff respectfully requests an Order shortening time to move up the
3 hearing date to early February. Time Warner does not oppose moving the hearing date to mid-
4 February.

5
6 Dated: January 7, 2008


Barron E. Ramos

[PROPOSED] ORDER

GOOD CAUSE HAVING BEEN SHOWN THEREFOR, it is Ordered that the hearing on plaintiff's motion to compel is shortened so that the new hearing date is set for _____. The parties will file opposing and reply papers in accordance with the code of civil procedure based upon the new hearing date.

Dated: January __, 2008

Hon. Luis R. Vargas

PROOF OF SERVICE

I am employed in the County of San Diego, California. I am over the age of 18 years and not a party to the within action. My business address is 132 N. El Camino Real, # 303, Encinitas, California 92024.

On January 7, 2008, I served the following documents:

UNOPPOSED EX-PARTE APPLICATION FOR AN ORDER SHORTENING TIME ON PLAINTIFF'S MOTION TO COMPEL; DECLARATION OF BARRON E. RAMOS IN SUPPORT THEREOF; POINTS AND AUTHORITIES; PROPOSED ORDER

on the parties in this action by placing a true copy thereof in a sealed envelope, addressed as follows:

Jeffrey M. Shohet
Julie L. Hussey
Carrie S. Dolton
DLA PIPER US LLP
401 B Street, Suite 1700
San Diego, CA 92101-4297
Facsimile: (619) 764-6644

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at Encinitas, California on January 7, 2008.


Barron E. Ramos

Fax Cover Sheet

Date: January 7, 2008
To: Jeffrey M. Shohet
Julie L. Hussey
DLA PIPER US LLP

Time: 10:06 AM
Phone:

Fax: (619) 764-6644

From: **Barron Ramos**
Attorney at Law, APC
132 N. El Camino Real, # 303
Encinitas, CA 92024

Phone: 858-349-6019
Fax: 760-994-1354
Email: barron@yourclasscounsel.com
ramosesq@yahoo.com

Message

Number of pages including Cover Sheet: 7

Dear Jeff and Julie,

FYI: I was able to get the Court to have the ex-parte at the same time as the CMC this Friday. Actually, it was the Clerk's suggestion.

Barron
